(28,362)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 407.

JEEMS BAYOU FISHING AND HUNTING CLUB, PRODUCERS OIL COMPANY, AND THE TEXAS COMPANY, APPELLANTS,

vs.

THE UNITED STATES OF AMERICA.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

INDEX.

	Page.
Caption	1
Transcript from the district court of the United States for the western district of Louisiana	1
Caption	1
Stipulation of counsel as to omission from printed records of maps, plats, etc	1
Bill of complaint	4
Motion to dismiss bill	12
Answer of Producers Oil Co., defendant	13
Answer of Texas Co., defendant	27
Exhibit "A"—Statement of runs by Texas Co. from Producers Oil Co.'s wells	31
Exhibit "B"—Statement of runs from Producers Oil Co.'s wells	31
Reply of plaintiff to set-off and counter-claim of Producers Oil Co., defendant	31
Order overruling motion to dismiss	33
Answer of Jeems Bayou Fishing and Hunting Club, defendant	34
Order of reference to special master	50

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 19, 1921.

	Page.
Note of evidence offered before special master	50
Evidence for plaintiff	62
Testimony of Arthur D. Kidder	62
H. E. Barnes	202
L. Z. Crawford	225
Lester L. Clement	241
Dr. Henry C. Cowles	279
Lester L. Clement (recalled)	333
Lionel L. Janes	339
Prof. Frank Leverett	371
Lionel L. Janes (recalled)	402
Arthur D. Kidder (recalled)	411
Mrs. A. L. Ballard	427
M. G. Angel	428
J. F. Ivey	432
W. J. Jones	434
E. D. White	439
Gus N. Vaughn	442
Vernon Teat	444
Note of evidence for defendant	446
Evidence for defendant	453
Testimony of Prof. Frank Leverett	453
Testimony of James W. Neal	466
Admission by counsel as to certain facts	473
Testimony of Prof. Frank Leverett (recalled)	474
Plaintiffs' Exhibit No. 1—Letter, Commissioner to Kidder, September 27, 1913	477
2—Letter, Commissioner to Kidder, December 1, 1916	482
3—Plat of T. 20, R. 16 W., Warren's Survey	485
4—Plat of T. 20 N., R. 16 W., Bristol's Survey	485
8—Resurvey plat of T. 20 N., R. 16 W	485
9—Supplemental plat of T. 20 N., R. 16 W	486
10—Supplemental topographical plat	486
12—Supplemental topographical plat	486
19—Extract from General Land Office Tract Book as to section 10, T. 20 N., R. 16 W.	486
20—Extract from Tract Book of U. S. land office at Baton Rouge	489
21—Extract from Tract Book of State land office	491
22—Records U. S. Surveyor General's office showing swamp selections	492
23—Withdrawal order of December 15, 1908.	495
24—Withdrawal order of July 2, 1910	497
Evidence for plaintiff offered on trial of pleas *in re* United States *vs.* Sam W. Mason *et als*	500
Exhibit "C"—Telegram, Commissioner to register and receiver, December 15, 1908	500

Page.

Exhibit "D"—Letter, Commissioner to register, December 15, 1908 501
"E"—Letter, Commissioner to register, July 16, 1910.. 503
"F-1"—Letter, Director Geological Survey to Secretary Interior, October 24, 1908..... 505
"F-2"—Letter, Director to Secretary Interior, November 6, 1908..... 509
"F-3"—Letter, Commissioner to register, December 15, 1908 513
"F-4"—Telegram, Commissioner to register, December 15, 1908 514
"F-5"—Letter, Director to Secretary Interior, May 19, 1909 515
"G"—Letter, Commissioner to register, June 6, 1910.... 517
"H"—Letter, Director to Secretary Interior, June 3, 1910 519
"I"—Letter, Commissioner to register, June 29, 1910.. 522
"J"—Letter, Commissioner to Director, June 6, 1910.. 524
"K"—Letter, register to Commissioner, June 13, 1910.. 525
"M"—Decision of Secretary Interior, November 23, 1914 527
"N"—Decision of Commissioner General, December 27, 1913 531
"O"—Decision of Commissioner General *in re* entry of Alberty, December 22, 1913..... 538
"P"—Decision Secretary Interior *in re* entry of Alberty, November 23, 1914..... 547
"R"—Extract from Tract Book General Land Office as to section 5..... 549
"T"—Telegram, Commissioner to register..... 551
"S"—Letter, Commissioner to register, December 15, 1908 552
Defendant's Exhibit No. 1—Patent to Stephen D. Pitts..... 554
2—Field-notes of Warren Survey and plat. 555
5—Deed, Pitts to Kerley..... 555
6—Deed, Pitts to Kerley and Jeems Bayou Fishing and Hunting Club..... 556
12—Ratification of Lucie Pitts Joslyn..... 556
13—Deed, Kerley to Jeems Bayou Fishing and Hunting Club..... 557
14—Deed, A. C. Pitts to T. H. and A. L. Pitts 557
15—Compromise between A. L. and T. H. Pitts and Jeems Bayou Fishing and Hunting Club..... 558
16—Lease, Jeems Bayou Fishing and Hunting Club to Producers Oil Co..... 562
17—Letter, Blanchard to Commissioner General Land Office, February 1, 1897, and photographs of maps.... 569
18—Letter, Commissioner to Blanchard, February 8, 1897..... 574

Page.

Defendant's Exhibit No. 19—Letter, Director to Secretary Interior, November 6, 1908..... 577
24—Petition and supplemental petition Jeems Bayou F. & H. Club *vs.* Commrs. Caddo Levee District..... 580
25—Statements of production of oil and cost of drilling and operating, etc.. 588
Report of special master..... 618
Exception of Jeems Bayou Hunting and Fishing Club to report of special master..... 656
Exceptions of Producers Oil Co. to report..... 661
Exceptions of Texas Company to report..... 666
Exceptions of plaintiff to report..... 668
Opinion of the Court, Foster, J..... 672
Decree..... 676
Petition of defendants for appeal and order granting same..... 680
Assignment of errors..... 682
Bond of defendants on appeal..... 688
Petition of plaintiff for cross-appeal and order granting same..... 690
Assignment of errors on cross-appeal..... 691
Præcipe for transcript..... 694
Stipulation as to transcript and order allowing same..... 705
Supplemental præcipe for transcript..... 708
Agreement as to exhibits to answers of defendants..... 710
Recapitulation of cost of drilling wells Nos. 5 to 11, and expense of operating wells, etc..... 711
Further agreement as to transcript..... 712
Stipulation as to petition for cross-appeal and assignment of errors thereon..... 713
Clerk's certificate..... 714
Citations on appeal and cross-appeal..... 714
Argument and submission..... 715
Petition of appellants for leave to file copy of judgment of State court *in re* Jeems Bayou Fishing & Hunting Club *vs.* Board of Commissioners of Caddo Levee District..... 715
Order allowing appellants leave to file copy of judgment..... 716
Copy of judgment of State court..... 717
Opinion, Walker, J..... 718
Judgment..... 724
Petition for appeal and order allowing same..... 725
Assignment of errors..... 726
Appeal bond..... 730
Stipulation as to transmission of original exhibits..... 732
Clerk's certificate..... 733
Citation and service..... 734

Petition for cross appeal..... 748 735
Order allowing cross appeal..... 749 735
Assignment of errors on cross appeal..... 749 736
Clerk's certificate on cross appeal..... 752 737
Citation and service on cross appeal..... 753 737

UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Judicial Circuit.

Pleas and Proceedings had and done at a regular term of the United States Circuit Court of Appeals for the Fifth Circuit, begun on the third Monday in November, A. D. 1920, at New Orleans, Louisiana, before the Honorable Richard W. Walker, the Honorable Nathan P. Bryan, and the Honorable Alex. C. King, Circuit Judges.

JEEMS BAYOU FISHING AND HUNTING CLUB, PRODUCERS OIL COMPANY, and THE TEXAS COMPANY, Appellants and Cross-Appellees,

versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Be it remembered, That heretofore, to-wit, on the 19th day of April, A. D. 1920, a transcript of the record in the above styled cause, pursuant to an appeal and cross-appeal from the District Court of the United States for the Western District of Louisiana, was filed in the office of the Clerk of the said United States Circuit Court of Appeals for the Fifth Circuit, which said transcript was filed and docketed in said Circuit Court of Appeals as No. 3522, as follows, to-wit:

STIPULATION AS TO ORIGINAL EXHIBITS.

Filed in U. S. Circuit Court of Appeals, May, 25th, 1920.

In the District Court of the United States for the Western District of Louisiana.

	No.
United States v. C. W. Lane, et al.	1153
United States v. Charles J. Greene, et al.	1155
United States v. Jeems Bayou Fishing & Hunting Club et al.	1157
United States v. Gulf Refining Company of Louisiana	1158
United States v. W. H. Enders, et al.	1160
United States v. Southwestern Gas & Electric Co., et al.	1162
United States v. J. M. Walling, et al.	1163
United States v. Mrs. Jessie M. LaRobadierre, et al.	1164
United States v. A. C. Loucks, et al.	1165

Stipulation of Counsel.

In the above numbered and entitled suits it is agreed by and between counsel for all parties as follows, to-wit:

That, whereas, there have been sent up to the United States Circuit Court of Appeals certain maps and exhibits in the original for reproduction in each of the several transcripts, namely:

1. Plat of survey made by A. W. Warren, Deputy Surveyor, approved August 31, 1839.

2. Field notes of the Warren survey.

3. Resurvey plat of Township 20 North, Range 16 West, approved by the Commissioner of the General Land Office, July 24, 1916.

4. Supplemental plat of Township 20 North, Range 16 West, approved March 28, 1917, by the Commissioner of the General Land Office.

5. Supplemental topographic plat of Township 20 North, Range 16 West, approved March 28, 1917, by the Commissioner of the General Land Office.

6. Illustrative profile, marked plaintiff's Exhibit F.

Whereas all of the above suits have been appealed from the United States District Court for the Western District of Louisiana to the United States Circuit Court of Appeals for the Fifth Circuit, and all of said plats and exhibits, with the exception of the illustrative profile above mentioned, were included in the original in the transcript of appeal in the suit entitled United States v. Jeems Bayou Fishing & Hunting Club, et al., No. 1157; and,

Whereas, exhibits numbered one to five, inclusive, are applicable to all of said suits, and exhibit No. 6 is applicable to suits Nos. 1153, 1158, 1162, 1163 and 1164; and,

Whereas, the cost of reproducing and incorporating the said exhibits in the several transcripts will be very large; now, therefore:

It is agreed that in lieu of reproducing and including the said exhibits in the respective transcripts, the Clerk of the United States Circuit Court of Appeals for the Fifth Circuit may bind or fasten together, in such man-

ner as he may deem proper the said plats and exhibits and index the same so that ready reference may be had to them in the cases to which they are applicable.

It is further agreed that the said exhibits shall be deemed and considered as a part of the records on appeal in each of the said suits, as far as applicable thereto, to the same extent as if the exhibits mentioned had been reproduced and incorporated in the several transcripts.

It is further agreed that this stipulation shall be printed in each of the transcripts of appeal heretofore filed in the United States Circuit Court of Appeals for the Fifth Circuit in suits 1157, 1155, 1160 and 1165.

It is further agreed that a duplicate of this stipulation shall be filed in the United States District Court for the Western District of Louisiana, and shall be copied into the transcript of appeal in Suit No. 1153, entitled United States v. C. W. Lane, et al., the record in which case will, by stipulation, be made a part of the record on appeal in suits Nos. 1158, 1162, 1163, and 1164.

Thus done and signed, in duplicate, this 18 day of May, 1920.

ROBERT A. HUNTER,
Attorney for Plaintiff.

J. C. PUGH,
Atty. for Standard Oil Co. of La.

FOSTER, LOONEY & WILKINSON,
CLEM. RATCLIFF,
BLANCHARD, GOLDSTEIN & WALKER,
HAMPDEN STORY,
WILKINSON, LEWIS & WILKINSON,
BARNETTE & BLANCHARD,
THIGPEN & HEROLD,
S. M. COOK,
Attorneys for all Defendants.

(BILL OF COMPLAINT.)

In the District Court of the United States for the Western District of Louisiana, Shreveport Division.

United States of America, Plaintiff,
vs. No. 1157, In Equity.
Jeems Bayou Fishing and Hunting Club, The Producers Oil Company, The Texas Company, Defendants.

To the Honorable Judge of the District Court of the United States for the Western District of Louisiana, sitting within and for the Shreveport Division:

The United States of America, by its Solicitor, Robert A. Hunter, Special Assistant to the Attorney General, acting herein under the direction and by the authority of the Attorney General of the United States, brings this Bill of Complaint against the Jeems Bayou Fishing and Hunting Club, a corporation organized under the laws of the State of Louisiana, domiciled in the City of Shreveport, Parish of Caddo, in the Western District of Louisiana, and of which W. T. Crawford its President, Levi Cooper, Vice-President, and W. A. Kerley, Secretary and Treasurer; and the Producers Oil Company, and the Texas Company, corporations, organized under the laws of the State of Texas, having their domicile in the City of Houston, in that State, and having offices and doing business in the City of Shreveport, in the Western District of Louisiana, with Hampden Storey as their agent for the service of process, and thereupon complains and shows unto your Honor:

I.

That on and before December 15, 1908, the plaintiff was the owner as a part of its public domain, of a certain

tract of land, which was then unsurveyed public land of the United States, but which has since been surveyed under the direction and with the approval of the Secretary of the Interior, and is now known and described as Lots Eight, Nine and Ten (8, 9 and 10) of Section Ten (10), in Township Twenty (20) North of Range Sixteen (16) West, Louisiana Meridian, Louisiana, situated in the Parish of Caddo, Western District of Louisiana, containing Eighty-five and twenty-two hundredths (85.22) acres, as shown by a plat of survey approved March 28, 1917, by Clay Tallman, Commissioner of the General Land Office, and ex-officio Surveyor General for the State of Louisiana.

That on and prior to the aforesaid date plaintiff was, and still is, the owner and entitled to the possession of the above described land, and likewise of all oil, petroleum, gas and other minerals therein contained.

II.

On December 15, 1908, in order to conserve the public interests, and in aid of such legislation as might thereafter be proposed, recommended and enacted, the President of the United States, by and through the Secretary of the Interior, and under the legal authority vested in him so to do, duly and regularly withdrew from settlement and entry and from all other forms of appropriation, all of the public lands in Townships 15 to 23 North, and Ranges 10 to 16 West, Louisiana Meridian, which withdrawal included the lands herein involved.

On the 2nd day of July, 1910, the President of the United States, acting by and through the Secretary of the Interior, by executive order and under special authority conferred by the act of June 25, 1910, entitled "An Act to authorize the President of the United States

to make withdrawals of public lands in certain cases," ratified and confirmed and continued in full force and effect the previous order of withdrawal of December 15, 1908, above set forth, insofar as it affected the land described herein, including the same as a part of Petroleum Reserve Number Four. That such lands so withdrawn by said Order of July 2, 1910, including the land herein involved, were withdrawn from settlement, location, sale or entry, and reserved for classification and in aid of legislation affecting the use and disposal of petroleum lands belonging to the United States.

Neither of said Orders of withdrawal has ever been vacated but both are now in full force and effect, and said lands above named, including the property involved herein, ever since the date of the first withdrawal, December 15, 1908, have not been subject to exploration for oil, petroleum, gas, or other minerals, or to location or entry of any kind under the general land laws, or mineral laws, of the United States.

III.

Plaintiff avers that notwithstanding said orders of withdrawal, and in violation of the rights of the plaintiff, and contrary to its laws, and without any valid title, lawful right or authority, the defendants herein, in bad faith, entered upon and took possession of the tract particularly described in paragraph I hereof, for the purpose of drilling thereon for oil and gas, and did so drill seven wells known as Producers Oil Company's J. B. F. & H. Club Wells Nos. 5, 6, 7, 8, 9, 10 and 11, and did withdraw therefrom large quantities of oil and gas, the exact amount and value of which is unknown, all to the great and irreparable injury of plaintiff.

IV.

That on and prior to the dates of the withdrawal orders hereinabove set forth, to-wit: December 15, 1908, and July 2, 1910, none of the said defendants, or any one from whom the defendants, or any of them, claim, was in the possession of said land, or a bona fide occupant thereof in diligent prosecution of work thereon leading to a discovery of oil or gas, and no such discovery was in fact made prior to said orders of withdrawal, nor until long after said orders were issued, and had become effective to withdraw said land from location, entry and other appropriation.

V.

Plaintiff is informed and believes that the oil and gas withdrawn from the said tract of land, as above set forth, were extracted therefrom under the color of a pretended lease made by the said Jeems Bayou Fishing and Hunting Club to the Producers Oil Company, of date October 17, 1910, recorded October 25, 1910, in Book 66, page 294 of the records of the Parish of Caddo, State of Louisiana.

Plaintiff avers that the said Jeems Bayou Fishing and Hunting Club, said Producers Oil Company, and said Texas Company have no right, title or interest in and to the said tract of land, but, acting under the said pretended lease, and subsequent to the withdrawal orders hereinabove referred to, entered upon the said tract of land, drilled wells thereon, as aforesaid, and took therefrom a large quantity of oil and gas, which the defendant Producers Oil Company has marketed and sold to defendant Texas Company; that the said Producers Oil Company received the price of the oil and gas so pro-

duced, marketed and sold by it, and paid a royalty therefrom to the said Jeems Bayou Fishing and Hunting Club, the amount of which is to the plaintiff unknown.

The exact quantity of the oil and gas so produced, withdrawn from the land, marketed and sold, and the value thereof, being unknown to plaintiff, full discovery thereof from said defendants herein is sought.

VI.

Plaintiff avers that the defendants have not, and never had, any right, title or interest in or to, or lien upon, the said land, or any part thereof, or any right, title or interest in or to the petroleum, minerals, oil or gas therein, but, on the contrary, the acts of said defendants who have entered upon said land and drilled for oil and gas thereon and used and appropriated the petroleum and gas deposited therein, and assumed to sell and convey any interest in or to any part of said land, were all in violation of the laws of the United States and of the aforesaid orders withdrawing and reserving said land, and all of said acts were, and are, in violation of the rights of plaintiff.

3 VII.

Plaintiff avers that the defendants are now unlawfully trespassing upon the said land and are asserting claims thereto and will continue to do so; that they will also drill other wells, operate the same, and sell and dispose of the oil and gas produced therefrom, and, unless restrained by order of this Court, will otherwise tresspass on said land, to the great and irreparable damage of the plaintiff.

VIII.

Plaintiff avers that the value of said land and the oil and gas taken therefrom exceeds the sum of One Hundred Thousand ($100,000.00) Dollars, and that all of the defendants herein acted in bad faith in the premises.

IX.

In consideration whereof and for as much as the plaintiff is without full, adequate and complete remedy in the premises save in a court of equity, plaintiff prays:

1. That the said defendants be each required to make full, true and direct answers to all and singular the matters and things herein set forth, and to disclose their claim to said land and the amount and value of the oil and gas taken therefrom, as fully as if they had been particularly interrogated.

2. That the land above described may be decreed by this Court to have been at all times from and after December 15, 1908, lawfully withdrawn from settlement, entry, location, sale or other form of appropriation under the public land or mineral laws of the United States.

3. That the lease made by the Jeems Bayou Fishing and Hunting Club, on October 17, 1910, recorded October 25, 1910, in Book 66, page 294, of the records of the Parish of Caddo, State of Louisiana, may be declared null and void, and held for naught, insofar as the same includes, directly or indirectly, the property in controversy in this cause, and to that extent that the said lease be cancelled and annulled.

4. That the land above described may be adjudged and decreed to be the perfect property of the plaintiff,

free and clear of all claims of the said defendants or any of them, and that the possession of said land may be restored to the plaintiff.

5. That said defendants, during the progress of this cause, and finally and perpetually thereafter, may be enjoined from setting up any claim to said land, or any part thereof, and from creating any cloud upon the plaintiff's title to the same, or to any of the oil, gas or minerals on or under the same, and from going upon said land, or in any manner using the same, or extracting oil or other minerals therefrom.

6. That a receiver may be appointed by this Court to take possession of said land and of all wells, improvements and drilling paraphernalia thereon, and any other property and instrumentalities on said land, used for the purpose of boring and extracting, storing and transporting oil, with full power and authority to continue operations on said land in the production and sale of oil, gas and other minerals, and to do and perform such acts as may be necessary to protect the property of plaintiff against injury and waste and for the preservation thereof.

7. That an accounting may be had by each of said defendants wherein each of them shall make a full, complete, itemized and correct disclosure of the quantity of oil and gas removed or extracted from said land and of any and all moneys, or things of value, derived from the sale and disposition of same, and all rents, royalties and proceeds arising from the sale or lease of same, and that the plaintiff may recover from the said defendants, respectively, all such sums so received by them, and all damages sustained by plaintiff in the premises.

4 8. That Plaintiff may have such other and further relief as may seem just to this Honorable Court and agreeable to equity and good conscience.

May it please the Court that writs of subpoena issue directed to the Jeems Bayou Fishing and Hunting Club, the Producers Oil Company, and the Texas Company, defendants, commanding them at a certain time and under a certain penalty therein to be named, to appear before this honorable Court and then and there full, true and direct answers make to all and singular the premises, and to stand to perform and abide by such order, direction and decree as may be made against them in the premises and as shall be meet and agreeable to equity.

ROBERT A. HUNTER,
Special Assistant to the Attorney General.

AFFIDAVIT.

United States of America,
Northern District of California.

D. R. Thompson, being first duly sworn, deposes and says:

That he is Mineral Inspector of the General Land Office, and, as such, has made investigation of the status of the lands belonging to the United States in the Parish of Caddo, Louisiana, from which oil and gas have been extracted, and, particularly, of the land described in the foregoing bill of complaint, withdrawn by the President from entry, location and all forms of appropriation by order of December 15, 1908, and July 2, 1910; and that from the examination of such lands, and from examination of the records of the General Land

Office and of the local Land Office in the State of Louisiana, he has knowledge of the facts set forth in the foregoing Bill of Complaint, and that the facts and allegations therein contained are true.

D. R. THOMPSON.

Sworn to and subscribed before me this 7th day of July, 1917.

T. L. BALDWIN,
Clerk United States District Court,
(Seal) Northern District of California.

Indorsed: Bill of Complaint. Filed Jul. 19, 1917.

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5 (MOTION TO DISMISS BILL OF COMPLAINT.)

Now into Court come all of the defendants, and move this Honorable Court to dismiss the bill of complaint herein filed on the grounds as follows, to-wit:

1.

Misjoinder;

2.

Insufficiency of facts to constitute a valid cause of action in equity;

3.

That the said bill of complaint is insufficient under Rule 25 of the Equity Rules;

4.

That the verification attached to said bill of complaint is not sufficient;

5.

That the defendants named in said bill of complaint are not charged with being joint trespassers, and that the causes of action set forth are multifarious.

Wherefore defendants pray that this motion be allowed, and plaintiff's suit be dismissed at its cost, and for all necessary orders in the premises.

BLANCHARD & SMITH,
Attorneys for Jeems Bayou Hunting and Fishing Club, Defendant.
HAMPDEN STORY,
Attorneys for Producers Oil Company, and The Texas Company, Defendants.

Indorsed: Motion to Dismiss. Filed Aug. 9, 1917.

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6 ANSWER OF PRODUCERS OIL CO.

The answer of Producers Oil Company to the bill of complaint in the above numbered and entitled cause.

Now comes the Producers Oil Company, and for answer thereto, says:

That it denies that the plaintiff, on the 15th day of December, 1908, was, or ever since was, or now is, the owner as part of its public domain of that certain tract of land designated in the bill of complaint as Lots Eight

(8), Nine (9) and Ten (10), Section Ten (10), Township Twenty (20) North, Range Sixteen (16) West, Louisiana, Meridian, Caddo Parish, Louisiana, containing eighty-five and 22-100 (85.22) acres, as shown on a plat of survey approved March 28, 1917, by Clay Tallman, Commissioner of the Land Office and Ex-Officio Surveyor General of the State of Louisiana, purporting to reflect a survey of lands in Township Twenty (20) North, Range Sixteen (16) West, aforesaid, made under the direction and with the approval of the Secretary of the Interior of the United States, alleged, at the time of and prior to such survey, to be unsurveyed lands of the United States.

Defendant further denies that the plaintiff on, or prior to, the aforesaid date was, or ever since was, or now is, the owner and entitled to the possession of the aforesaid described tracts of land, or of any part thereof, or of any of the oil, petroleum, gas and other minerals therein contained.

Defendant shows that there is not now, nor was there ever, such a tract, or tracts, of land known as Lots Eight (8), Nine (9) and Ten (10), Section Ten (10), Township Twenty (20) North, Range Sixteen (16) West, as set out in the bill of complaint herein, and that the purported survey showing such lots, is illegal, null and void, and the execution and approval thereof, beyond the power, jurisdiction, control or authority of the General Land Office of the United States, for the reason, that the said tracts of land were not, at the date of said survey, in the ownership of the United States, but were in private ownership, as will be hereinafter particularly shown.

7

II.

Defendant admits that the President of the United States, on December 15, 1908, in order to conserve the

public interest, and in aid of such legislation, as might be proposed, recommended and enacted, by and through the Secretary of the Interior, withdrew from settlement and entry, and from all forms of appropriation, all of the public lands in Townships 15 to 23 North and Ranges 10 to 16 West, Louisiana Meridian, but, defendant denies that the said order of withdrawal, if made under legal authority, which is denied, included and embraced, or purported and intended to include and embrace, the lands involved herein, and for the further reason and inasmuch as, as aforesaid, the said lands, at the date of said withdrawal, formed, or were, no part of the public domain, of the United States, but were, on or prior to, and since said date, and now are, in private ownership, as will be hereinafter shown.

Defendant further admits that the President of the United States, by and through the Secretary of the Interior, by executive order, and under special authority conferred by the Act of June 25, 1910, entitled an act "to authorize the President of the United States to make withdrawal of public lands in certain cases," ratified and confirmed and continued in full force and effect the previous order of withdrawal of December 15, 1908, insofar as it affected lands as part of "Petroleum Reserve No. 4", but defendant denies that the tracts of land, in controversy herein, were involved or included, or if so included, they were illegally, wrongfully and erroneously so included, in said order of withdrawal for the reason that at the date of said order of withdrawal, and since, and prior thereto, the ownership of said tracts of land were not in the United States.

Defendant admits that neither of said orders of withdrawal have been vacated, and are still in force and effect, but denies that said orders of withdrawal, in any manner, affect the tract or tracts of land in controversy, inasmuch as said tracts or parcels

8

of land, at the respective dates of said orders of withdrawal, were not included in said orders, or either of them, nor were such tracts or parcels of land in the ownership of the United States.

III.

Defendant denies that it entered upon and took possession of the property, herein involved, and described in Article I of the bill of complaint, in violation of the rights, or of any right or rights, of the United States, plaintiff herein, or contrary to its laws, and, or, without any valid title, lawful right or authority, or in bad faith; but avers that it, as the lessee of the Jeems Bayou Fishing and Hunting Club, the legal owner of said tracts or parcels of land, under a mineral contract, entered upon and took possession of said property for the purpose of drilling and developing the same for oil or gas, and the extration therefrom of said minerals, and that this defendant did drill seven (7) wells, described as Jeems Bayou, Fishing & Hunting Club wells Nos. 5, 6, 7, 8, 9, 10 and 11, on the tracts of land referred to in Article I of the said bill of complaint, and produced therefrom oil, under said authority, grant and permission of the Jeems Bayou Fishing & Hunting Club, the amount and value of which oil will be hereinafter more specifically set forth.

IV.

Defendant says, that all of the allegations of Article IV of the bill of complaint are irrelevant, immaterial and not pertinent to the issues of this cause, for the reason, and inasmuch as, as aforesaid, the property, or tracts or parcels of land, herein involved, are not, nor were they, at any of the dates referred to, the property of the United

States, and that the Jeems Bayou Fishing and Hunting Club, the lessor of this defendant, and this defendant, or either of them, do not claim, or assert, title or ownership to, or claims or privileges on, said property under any discovery of oil, gas or other minerals, under the mining laws of the United States, but that defendant claims and asserts the right and privilege of exploiting and developing said tracts of land, herein involved, as forming a component part of the lands described in the mineral lease executed by the said Jeems Bayou Fishing and Hunting Club, of date, October 17, 1910, and that the said
9 Jeems Bayou Fishing and Hunting Club claims and asserts, and for a long time last past, and since, has ever, claimed and asserted title and ownership thereto, under valid titles deraigned through mesne conveyances under patents issued by the United States to Stephen D. Pitts, of date, April 2, 1860, as will be more fully set out.

V.

Defendant denies that the mineral lease under which oil is being extracted from the land, herein involved, was under color of a pretended lease, but, to the contrary, avers, that it did enter on said property, herein involved, and took possession thereof, in good faith, under and by virtue of a good, legal and valid mineral lease executed by the said Jeems Bayou Fishing and Hunting Club to it, of date October 17, 1910, for a valid and sufficient consideration, and for a part, or share, or royalty, of the oil produced and saved from the premises described in said lease, in the manner as in said lease is provided. Defendant admits that said lease was recorded on the date and in the Book of Conveyances of the Records of the Parish of Caddo, as set out in Article V of the bill of complaint.

VI.

Defendant denies that it, and the said Jeems Bayou Fishing and Hunting Club, or either of them, had, or have, no right, title or interest in the lands, involved herein, but avers that it, defendant, claims a lawful right and privilege to exploit said land, the legal ownership of which, as aforesaid, is in the Jeems Bayou Fishing and Hunting Club, and that the oil produced and saved therefrom by this defendant, which will be hereinafter shown, inured to its benefit and that of said Jeems Bayou Fishing and Hunting Club, and was lawfully sold for its account and that of the said Jeems Bayou Fishing and Hunting Club, under the provisions and conditions of the mineral lease aforesaid, in the proportion and in the manner as will be hereinafter set forth.

Defendant annexes hereto, as will be hereinafter referred to, a statement of the oil produced and saved from the well referred to in Article III of the bill of complaint; but avers that, inasmuch as gas was not produced from said land, it makes no statement therefor.

VII.

Defendant denies that it is unlawfully trespassing upon the lands involved herein; but, that it is lawfully upon said tracts of land, forming a part of the lands described in the mineral lease aforesaid, under lawful authority, and has been, and now is, in good faith, asserting lawful claims, rights and privileges thereto; will continue so to do, and to drill other well or wells, as it may deem proper, in its judgment, and to operate thereon for the production and development of oil or gas, and to dispose of, or cause to be disposed of, all oil or gas, produced or that may hereafter be produced from or on the property in controversy, or found there-beneath, as it

has, or has had, at all times, a lawful and valid right so to do.

Defendant further denies the right of the plaintiff to restrain it, by order of Court or by writs of injunction, emanating therefrom, from operating on said lands, herein involved, or that plaintiff herein will be irreparably damaged thereby, if said order of Court or writs of injunction be denied to it, or by any act or conduct of this defendant.

VIII.

Defendant denies that it has no right, title or interest in the lands involved herein, but avers, that it claims a lawful right and privilege to exploit said tracts of land, under a mineral lease, as aforesaid, from the Jeems Bayou Fishing and Hunting Club, the lawful owner of said land, deraigning title thereto, as will be hereinafter more specifically set forth, and that the oil produced and saved, and sold, therefrom, by this defendant, inured to its benefit, and was for its account and that of the said Jeems Bayou Fishing and Hunting Club, and the proceeds of the sale thereof distributed in the proportion and in the manner and form as will appear hereinafter.

IX.

Defendant admits that oil has been produced and saved, from said land, but denies that any gas was produced therefrom in any appreciable quantity, or at all.

Defendant admits that the oil taken from said tracts of land, in controversy, and the oil produced and
11 saved therefrom, exceeds the sum of One Hundred Thousand ($100,000.00) Dollars.

X.

Defendant avers, that it, as aforesaid, entered upon said tracts of land, involved herein, and on the lands described

in a lease executed by the Jeems Bayou Fishing and Hunting Club, to it, dated October 17, 1910, whereunder there was granted and conveyed to this defendant the right and privilege of exploiting and developing the same for oil and gas, and other minerals, for the consideration of Three Thousand and Six Hundred ($3,600.00) Dollars, paid by this defendant to said Jeems Bayou Fishing and Hunting Club, and one-eighth (1-8) of all oil, produced and saved from the leased premises, up to two hundred (200) barrels per well per day, and one-sixth (1-6) royalty on all oil produced and saved in excess of two hundred (200) barrels, and One Hundred ($100.00) Dollars per well, per annum, for gas, when said gas is sold and marketed off the premises, and one-tenth (1-10) royalty on all other minerals, and warranting and agreeing to defend this defendant in its title to the land and right to exploit the same for the purposes as more explicitly conditioned and provided in said mineral lease.

That the said Jeems Bayou Fishing and Hunting Club acquired, through mesne conveyances, the lands described in said lease, and of which the land, in controversy, formed and is a part of the description therein and hereof, from the heirs of Stephen D. Pitts.

That the said Stephen D. Pitts acquired the said fractional Southwest quarter (SW4 of Section Ten (10), Township Twenty (20) North, Range Sixteen (16) West, under and pursuant to the Act of Congress approved April 24, 1820, entitled an act "making further provision for the sale of public lands", and acts supplemental thereto, from the United States, by issuance of patent therefor dated April 2, 1860, according to the official field notes and plat of survey of the General Land Office of the United States, and that said fractional Southwest quarter (SW4) of said Section Ten (10), Township and Range aforesaid, borders on and adjoins Jeems Bayou, or

Ferry Lake, a navigable body of water, and that at the date of the issuance of said patent, in accordance
12 with the official field notes and plat of survey of said General Land Office aforesaid, and the entry thereof by said patentee, the same bordered on said lake, a navigable body of water, and that said lake, or navigable body of water, was, and is, the boundary line of said fractional Southwest quarter (SW4) of Section Ten (10), Township Twenty (20) North, Range Sixteen (16) West, aforesaid, and that the same was not bounded by any meander line; the actual boundary line of the said Southwest quarter (SW4) of Section Ten (10), as patented by the United States to Stephen D. Pitts, bordering on said navigable body of water, extended to, and was, and is, bounded and limited, by the ordinary, or mean, high water of said Jeems Bayou, or Ferry Lake, at the time of the admission of the State of Louisiana into the Union, leaving no land in the ownership of the United States between said meander line and the ordinary high water of said lake, or navigable body of water, and that the Department of the Interior was without jurisdiction, power or authority to cause said tracts of land, in controversy, to be surveyed.

Defendant avers, that the United States, plaintiff herein, through its legally constituted authority, prior to the institution of this suit, on or about the 8th day of February, 1897, disclaimed, or denied, any ownership, claim, rights, title or interest, in and to the land in controversy herein, as is more particularly set forth in the answer of the Jeems Bayou Fishing and Hunting Club herein, Article X thereof.

Defendant avers, that the United States, plaintiff herein, has always heretofore disclaimed, or denied, any ownership, or rights, title or interest, in and to the land, in controversy, and it has only been since the discovery of oil upon said tracts of land that the plaintiff herein has

made any claims of ownership to the same, and that it having heretofore disclaimed ownership to said land, in controversy, and, having asserted that the same had passed from the United States into private ownership, it would be inequitable and unconscionable to permit the plaintiff, herein, to change, or shift, its position, by asserting, at this time, a right of ownership, or any rights, title or interest, in said land, after the same had passed into private ownership and the same had been improved and developed, in good faith and in the belief that the
13 defendant, the said Jeems Bayou Fishing and Hunting Club, and their authors in title, were the true owners thereof, and in making the same valuable, by defendant expending large sums of money in developing said land for oil and gas, and that the said claim of the United States, plaintiff herein, and asserted by this suit, is now a stale demand, and not favored in equity, and that plaintiff is now estopped from asserting any rights, title or interest in the said land, and which plea of estoppel defendant pleads in bar of the right of the plaintiff to recover herein.

This defendant avers, that, under said lease, it drilled on the leased premises (that is, on the Southwest quarter of Section 10, Township 20 North, Range 16 West, and of which the lands, in controversy, form and are a part thereof), eleven (11) wells, designated as Jeems Bayou Fishing and Hunting Club Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11.

That the wells referred to in plaintiff's bill of complaint, Article III thereof, were drilled into oil and completed, as follows:

No. 5, completed October 14, 1912;
No. 6, completed Nov. 2, 1912;
No. 7, completed December 13, 1912;
No. 8, completed January 13, 1913;

No. 9, completed January 28, 1914;
No. 10, completed March 4, 1914; and
No. 11, completed February 2, 1916.

Well No. 5 ceased producing oil on March 30, 1917, and was thereafter abandoned.

That the total oil produced from all wells drilled, under said lease, on said fractional section ten (10) amounts from October 14, 1912, up to and including the 30th day of June, 1917, to Four hundred thirty-seven thousand seven hundred eighty-seven and 80-100 ($437,787.80) barrels; and that, from and out of said total amount of oil there was produced from the lands, in controversy, from said wells Nos. 5, 6, 7, 8, 9, 10 and 11, from October 14, 1912, to and including June 30, 1917, the amount of two hundred fifteen thousand six hundred two and 20-100 (215,602.20) barrels of oil, of the value of Two Hundred fif-
14 fifty-one thousand thirty and 10-100 ($251,030.-10) Dollars.

That the proceeds of the sale of the oil so produced and saved from said wells Nos. 5 to 11, inclusive, were distributed, under the terms of said mineral lease, as follows, to-wit:

Producers Oil Company, one hundred eighty-eight thousand seven hundred seventy-seven and 22-100 (188,777.22) barrels of oil, sold for and at the value of Two Hundred nineteen thousand six hundred sixty-six and 15-100 ($219,-666.15) Dollars.

Jeems Bayou Fishing and Hunting Club, twenty-seven thousand eight hundred twenty-five and 28-100 (27,825.-28) barrels of oil, sold for and at the value of Thirty-one thousand three hundred sixty three and 95-100 ($31,-363.95) Dollars;

as shown by statements, showing total production, marked "A", and division of interest in said oil, marked "B."

XI.

This defendant, Producers Oil Company, in the alternative, specially avers, that the cost and expenses paid by it for the drilling and equipping of said wells Jeems Bayou Fishing and Hunting Club Nos. 5, 6, 7, 8, 9, 10, and 11, amounts to the sum of Forty-five thousand, six hundred thirty-two and 99-100 ($45,632.99) Dollars, and that the operating expenses incurred and paid in maintaining said wells and handling their production, amounts in the sum of Sixty-three thousand seven hundred twenty and 52-100 ($63,720.52) Dollars, making a total cost and expenditure of One hundred nine thousand three hundred fifty-three and 51-100 ($109,353.51) Dollars, as will be shown by bills of particulars hereto annexed and made parts hereof, marked Exhibits "B", "C", "D", "E", "F", "G", "H" and "I," respectively.

XII.

Defendant further avers, that it drilled on said lands, in controversy, the said seven (7) wells, Jeems Bayou Fishing and Hunting Club Nos. 5 to 11, inclusive, under a good and valid lease from said Jeems Bayou Fishing and Hunting Club, as aforesaid, and took possession thereof, for the purpose of developing the same for oil or gas, and other minerals, acting in good faith, and in the belief that the title and ownership of said lands were validly and legally vested in the said Jeems Bayou Fishing
15 and Hunting Club, and that all of its acts and conduct, as well as those of the said Jeems Bayou Fishing and Hunting Club, thereunder, were in absolute good faith; and that, in the event it should be held that plaintiff is the owner of said tracts of land, designated as Lots Eight (8), Nine (9) and Ten (10), Section Ten (10), Township Twenty (20) North, Range Sixteen (16)

West, in the bill of complaint, Article I thereof, that the defendant, Producers Oil Company, should be, and is, entitled to be, reimbursed the entire cost and expenses of drilling and equipping each of said wells Nos. 5 to 11 inclusive, and the expenses of operating and maintaining said wells, or any of them, as aforesaid, before it can be held liable for any oil extracted therefrom.

XIII.

The said Producers Oil Company further avers, that, in the event the tracts of land, herein involved, be declared to be in the ownership of the plaintiff, and it be evicted therefrom, there should be reserved to this defendant the right to sue and recover, over and against the Jeems Bayou Fishing and Hunting Club, on its warranty of the title of said lands, the price paid by this defendant to it for the mineral lease aforesaid, and for all damages as may by the judgment of this Court be awarded against this defendant, and for all damages which may be occasioned to it by said eviction.

Wherefore, having made full and complete answer to all the matters and things contained in the bill of complaint, this defendant prays the said bill be dismissed, and for judgment for its costs in this behalf incurred.

In the alternative, in the event that this Court should hold that plaintiff is the owner of the tracts of land, or property, in controversy, this defendant, Producers Oil Company, prays that it may be adjudged not liable to plaintiff on account and for the oil taken or extracted from said property, until plaintiff shall have reimbursed defendant for the costs and expenses of drilling, equipping, operating and maintaining said wells from which oil was produced and saved, and all incidental charges in handling, preserving, storing, transporting and selling of

said oil; and, that, in any event, if this relief be
16 refused or denied, that it be adjudged that the costs and expenses of drilling, equipping and operating said wells, or any of them, be in excess of the total value of the oil produced therefrom, that this defendant, or its co-defendant, or either of them, are not to be held liable to the plaintiff in and for any amount.

Defendant, Producers Oil Company, further prays, that, in the event it be evicted and disturbed in the possession of said property, herein involved, or from exercising any rights of drilling thereon for oil or gas, or other minerals, then, there be reserved to the defendant its right to sue and recover of the Jeems Bayou Fishing and Hunting Club the price, or consideration, paid to it by this defendant for that certain mineral lease of the said Jeems Bayou Fishing and Hunting Club to this defendant, and for all such damages, or sums, as may be occasioned by such eviction.

And, finally, defendant further prays for all necessary and proper orders in the premises, and for all general, special and equitable relief and for all such as it may, in equity and good conscience, be entitled to from the facts, and, the evidence which may be adduced on the trial hereof.

HAMPDEN STORY,
Attorneys for Producers Oil Company.

Indorsed—Filed Oct 22, 1917.

17 (ANSWER OF THE TEXAS CO. TO BILL OF COMPLAINT).

The answer of The Texas Company to the bill of complaint herein, and for answer thereto, says:

1.

That, not denying or admitting any of the matters or things in said bill of complaint, except as they may have any materiality and pertinency to its defense herein, defendant says, that it commenced, on or about July 14, 1911, and for a long time thereafter, from time to time, and on various and divers occasions, up to and including June 30, 1917, and still is, taking oil from wells drilled on the property leased by the Jeems Bayou Fishing and Hunting Club to the Producers Oil Company, bearing date October 17, 1910, which is referred to in Article 5 of the bill of complaint, but, defendant avers, that it is unable to state and to give what quantity of oil so received in its pipe lines came from any particular wells drilled on said leased property, that the oil produced from wells drilled on said leased premises was run and delivered into its pipe line by the Producers Oil Company as coming from all wells, and not from any particular designated well.

2.

Defendant avers, that on July 15, 1911, the Producers Oil Company and Jeems Bayou Fishing and Hunting Club executed an instrument, or division order, in writing, wherein and whereunder they declared certified and guaranteed that they were the legal owners of the well one (1) and up drilled on the Jeems Bayou Fishing and Hunting Club property in Section Ten (10), Township

Twenty (20) North, Range Sixteen (16) West, Caddo Parish, and directed, in said order, that the said oil, until further written notice, be credited to the Producers Oil Company and the Jeems Bayou Fishing and Hunting Club, in the proportions of seven eights (7-8) to said Producers Oil Company, and one-eighth (1-8) to said Jeems
18 Bayou Fishing and Hunting Club; that said oil was taken into its pipe line, under the terms and conditions of said division order, that said Producers Oil Company and Jeems Bayou Fishing and Hunting Club should pay all accrued storage and pipeage charges, and that the said oil should be subject to a reduction of two per cent. (2%) of the gross amount of all oil received by this defendant, in its pipe line, to cover all loss, waste and leakage, by evaporation, or otherwise, and on the further terms and conditions as are stated and recited in said division order, as will be shown upon the trial hereof.

3.

That subsequently to the execution of said division order the said The Texas Company, defendant, with the consent and approval of said Producers Oil Company and Jeems Bayou Fishing and Hunting Club, sold and disposed of all such oil run and received into its pipe line, for their respective accounts, at the daily posted market price for said oil, and said The Texas Company becoming the purchaser thereof at the highest posted market price obtainable therefor at the time of said purchases, and accounting for and paying over the proceeds of the sale of such oil to the said Producers Oil Company and the said Jeems Bayou Fishing and Hunting Club in the proportion as their interests therein appeared. That the total amount of oil received from said leased premises into the pipe line of The Texas Company was Eight Hundred Nine Thousand Nine Hundred Twenty-eight and 84-100

(809,928.84) barrels, from all wells producing oil on said premises, of the value of Seven hundred forty-four thousand two hundred forty-four and 5-100 ($744,244.05) Dollars, and that out of the proceeds of the sale of said oil, and under the terms of the division order of date July 15, 1911, heereinbefore referred to, so run to the said pipe line of The Texas Company, from July 15, 1911, to June 30, 1917, inclusive, there was accounted for and paid to the Producers Oil Company, for seven hundred nine thousand three hundred twelve and 83-100 (709,312.83) barrels of oil, being its seven-eighths (7-8) proportion of said oil, the sum of Six hundred fifty one thousand five hundred eleven and 53-100 ($651,511.53) Dollars, and to the Jeems Bayou Fishing and Hunting Club, One
19 hundred thousand six hundred sixteen and 1-100 (100,616.01) barrels of oil, being its proportion, or share, of said oil, under the terms of its lease to the said Producers Oil Company, the sum of Ninety two thousand and seven hundred thirty two and 52-100 ($92,732.52) Dollars; the amount of said oil and proportion of each of the parties in said division, as well as the price for said oil, being more particularly shown by reference to the exhibits marked "A" and "B", respectively, hereto annexed and made parts of this answer, and that the prices as reflected by said statements were the daily posted prices for said oil, which prices were fair and reasonable prices, or values, of said oil, at the time such sales were made. That there was deducted the amount of oil so received in its pipe line, two per cent. (2%), under the terms of said division order, for waste, leakage and evaporation of such oil, as will be more particularly shown on the trial hereof.

4.

Defendant denies that it took said oil into its pipe line in bad faith, but avers, that it accepted and received said

oil, as run, into its pipe line for transportation, from all of the wells drilled on the premises described in the said lease of the Jeems Bayou Fishing and Hunting Club to the said Producers Oil Company, in good faith, and for their respective accounts, and bought the same, in good faith, believing as it still believes, that the said Producers Oil Company and the said Jeems Bayou Fishing and Hunting Club, were, and are, the lawful owners of all the oil produced from said premises, in the proportion as reflected by said division order, and as provided in said lease.

5.

Defendant further avers, that it does not know, nor is it informed, which well, or wells, drilled on said premises, is, or are, on the land in controversy, but that the said oil so received from the Producers Oil Company and the Jeems Bayou Fishing and Hunting Club, into its pipe line was not received, or taken, into its pipe line from any particular, separate, distinct or designated well, or wells, but that all of said oil was run from and taken from all wells drilled on said leased premises without reference to any particular or designated well, and that it is unable to state and to give, with any degree of particularity and certainty, the amount of oil run from each well, or from any particular well or wells, drilled on the property, in controversy, into its pipe line and that prior to receiving said oil, into its pipe line, it was advised that the ownership of said land, on which said wells were drilled, was lawfully vested in the said Jeems Bayou Fishing and Hunting Club, by good and valid title, and that such oil was received, into its pipe line, in the belief, and in good faith, that this was and is the fact.

Wherefore, defendant prays, having made full and complete answer to the matters and things required of it in

plaintiff's bill of complaint, that said bill of complaint be dismissed, and for judgment in its behalf for all costs incurred herein.

And, finally, defendant prays for all general and equitable relief in the premises, and for all such as it may be entitled to from the evidence and facts adduced on the trial hereof, and for all necessary orders and decrees as may seem proper in equity and good conscience, and from the nature of this case.

As it ever prays, etc.

HAMPDEN STORY,
Solicitor for the Texas Company.

21 Exhibits "A" and "B,"—Statements of Runs by The Texas Company from wells of Producers Oil Company, etc., omitted from printed record pursuant to stipulation of counsel copied at page 710 hereof.

* * * * * * * * *

24 Indorsed:—Answer of The Texas Company. Filed Oct. 22, 1917.

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25 (PLAINTIFF'S REPLY TO DEFENDANT, PRODUCERS OIL CO.'S SET OFF AND COUNTER CLAIM).

I.

Now into this Honorable Court comes the United States of America, plaintiff in the above numbered and entitled cause, appearing herein and represented by its solicitor, Robert A. Hunter, Special Assistant to the Attorney General, and for reply to the set-off and counter-claim as-

serted by defendant, The Producers Oil Company, in its answer filed in the above numbered and entitled cause, shows:

II.

That plaintiff renews and reaffirms the allegations and prayer of the original bill of complaint filed herein.

III.

Plaintiff denies all the allegations of the said answer relating to said set-off and counterclaim, and particularly, paragraphs 11 and 12, and prayer of said answer.

IV.

Plaintiff shows that the said defendant is not entitled to any set-off and counterclaim, whatsoever in the premises.

V.

Further replying, plaintiff avers that the said defendant entered upon the land described in the bill of complaint, and extracted and removed oil and gas therefrom, as alleged in the bill of complaint, in bad faith, and said defendant was a willful and knowing trespasser upon said land.

VI.

Plaintiff further shows, in the alternative, that even if the said defendant is entitled to a set-off, or counterclaim, in any amount, which is denied, the sum
26 claimed by the defendant is excessive and should not be allowed.

VII.

Wherefore, plaintiff prays that the set-off and counterclaim asserted by the defendant be denied and disallowed, and that plaintiff have relief in the premises as prayed for in the bill of complaint.

ROBERT A. HUNTER,
Special Assistant to The Attorney General.

Indorsed:—Plaintiff's Reply to Defendants' (Producers Oil Company) Set-off and Counterclaim. Filed Oct. 24, 1917.

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27 MINUTE SHOWING OVERRULING OF MOTION TO DISMISS.

Equity Journal, Vol. L.

United States District Court, Western District of Louisiana.

Shreveport, La., Wednesday, February 27, A. D. 1918.
Court met pursuant to adjournment and was ordered opened.

Present and Presiding: Hon. Rufus E. Foster, U. S. Judge.

United States of America,
vs. No. 1157 In Equity.
Jeems Bayou Fishing & Hunting Club, et al.

This cause came on to be heard upon the Motions to Dismiss and upon the Motions to Strike out certain inter-

rogatories heretofore filed herein by defendants—Mr. Robert A. Hunter, Special Assistant to the Attorney General appearing as Solicitor for Complainant, and Mr. Leon R. Smith and Judge Hampden Story appearing as Solicitors for the Defendants. The said Motions were argued and submitted, and thereupon, the Court overruled the Motions to Dismiss, to which ruling of the Court defendants reserved bills of Exception,—the Motion to strike out certain Interrogatories was sustained as to The Texas Company with leave to the Complainant to renew said interrogatories at such time as it may seem proper, the Motion to Strike out interrogatories as to the Producers Oil Co., being overruled by the Court.

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28 THE ANSWER OF THE JEEMS BAYOU FISHING AND HUNTING CLUB TO THE BILL OF COMPLAINT IN THE ABOVE NUMBERED AND ENTITLED CAUSE.

Now comes the Jeems Bayou Fishing and Hunting Club, and with express reservation of its rights under its motion to dismiss heretofore filed, for answer thereto, says:

I.

That it denies that the plaintiff, on the 15th day of December, 1908, was or since was, or now is, the owner, as part of its public domain of that certain tract of land designated in the bill of complaint as Lots Eight (8), Nine (9) and Ten (10), Section Ten (10), Township Twenty (20) North, Range Sixteen (16) West, Louisiana Meridian, Caddo Parish, Louisiana, containing eighty-five and 22/100 (85.22) acres, as shown on a plat of survey approved March 28, 1917, by Clay Tallman, Commis-

sioner of the Land Office and Ex-Officio Surveyor General of the State of Louisiana, purporting to reflect a survey of lands in Township Twenty (20) North, Range Sixteen (16) West, aforesaid, made under the direction and with the approval of the Secretary of the Interior of the United States, alleged, at the time of, and prior to such survey, to be unsurveyed lands of the United States.

Defendant further denies that the plaintiff on, or prior to, the aforesaid date was, or since was, or now is, the owner and entitled to the possession of the aforesaid described tracts of land, or of any part thereof, or of any of the oil, pretroleum, gas and other minerals
29 therein contained.

Defendant shows that there is not now, nor was there, such a tract or tracts of land known as Lots Eight (8), Nine (9), and Ten (10), Section Ten (10), Township Twenty (20) North, Range Sixteen (16) West, as set out in the bill of complaint herein, and that the purported survey showing such lots, is illegal, null and void, and the execution and approval thereof, beyond the power, jurisdiction, control or authority of the General Land Office of the United States, for the reason that the said tracts of land were not, at the date of said survey, in the ownership of the United States, but were in private ownership, as will be hereinafter particularly shown.

II.

Defendant denies that the President of the United States, on December 15, 1908, in order to conserve the public interest, and in aid of legislation as might be proposed, recommended and enacted, by and through the Secretary of the Interior, withdrew from settlement and entry, and from all forms of appropriation, all of the public lands in Townships 15 to 23 North and Ranges 10 to 16 West, Louisiana Meridian. Defendant admits that the Secretary of the

Interior by an order dated Dec. 15, 1908, pretended to make such withdrawal. Defendant denies the said order of withdrawal, if made under legal authority, which is denied, included and embraced, or purported and intended to include or embrace, the lands involved herein, for the reason and inasmuch as aforesaid, the lands, at the date of said withdrawal, formed, or was, no part of the public domain of the United States, but was, on or prior to, and since said date, and now is, in private ownership, as will be hereinafter shown.

Defendant further admits that the President of the United States, by and through the Secretary of the Interior by executive order, and under special authority conferred by the Act of June 25, 1910, entitled an act "to authorize the President of the United States to make withdrawal of public lands in certain cases," purported to have ratified and confirmed and continued in full force and effect the previous order of withdrawal of December 15, 1908, insofar as it affected lands as part of "Petroleum Reserve No. 4", but defendant denies that the tracts of land, in controversy herein, were involved or included, or if so included, they were illegally, wrongfully and erroneously, so included, in said order of withdrawal, for the reason that at the date of said pretended order of withdrawal, and since, and prior thereto, the ownership of said tracts of land were not in the United States.

Defendant admits that neither said orders of withdrawal have been vacated, and that they are still in full force and effect, if the same were valid when issued but denies that said orders of withdrawal, in any manner, affect the tract or tracts of land in controversy, inasmuch as said tracts or parcels of land, at the respective dates of said orders of withdrawal, were not included in said orders, or either of them, nor were such tracts or parcels of land in the ownership of the United States.

III.

Defendant denies that it entered upon and took possession of the property herein involved, and described in Article 1 of the bill of complaint, in violation of the rights, or of any right or rights, of the United States, plaintiff herein, or contrary to its laws, and, or without any valid title, lawful right or authority, or in bad faith; but avers that it is the legal owner of said tracts or parcels of land. Defendant avers that it executed a mineral lease or contract to the Producers Oil Company, under which the said Company entered upon and took possession of said property for the purpose of drilling and developing the same for oil or gas, and the extraction therefrom of said minerals, and that the said Producers Oil Company did drill seven (7) wells, described as Jeems Bayou Fishing and Hunting Club Wells Nos. 5, 6, 7, 8, 9, 10 and 11, on the tracts of land referred to in Article 1 of the bill of complaint, and produced therefrom oil, the amount and value of which oil will be hereinafter more specifically set forth.

IV.

Defendant says that all of the allegations of Article IV of the bill of complaint are irrelevant, immaterial and not pertinent to the issues of this cause, for the reason, and inasmuch as, aforesaid, the property, or tracts or parcels of land herein involved, are not, nor were they at any of the dates referred to, the property of the United States; and that the Producers Oil Company, the
31 lessee of defendant, or either of them, do not claim, or assert, title or ownership to or claims or privileges on said property under any discovery of oil, gas or other minerals under the mining laws of the United States, but that defendant as the true and lawful owner of said land, has executed a mineral lease or contract

to the Producers Oil Company, and that under said mineral lease or contract, the Producers Oil Company asserts the right and privilege or exploiting and developing said tracts of land herein involved, as forming a component part of the lands described in the mineral lease or contract executed by this defendant to the Producers Oil Company, and that defendant claims and asserts, and for a long time past, and since, has ever claimed and asserted title and ownership thereto, under valid titles derived through mesne conveyances under a patent issued by the United States to Stephen D. Pitts, of date of April 2, 1860, as will hereafter be more fully set forth.

V.

Defendant denies that the mineral lease under which oil is being extracted from the land herein involved, was under color of a pretended lease, but, to the contrary, avers that its lessee, the Producers Oil Company, did enter on said property, herein involved, and took possession thereof, in good faith, under and by virtue of a good, legal and valid mineral lease executed by defendant to said Producers Oil Company, of date of October 17, 1910, for a valid and sufficient consideration, and for a part, or share, or royalty, of the oil produced and saved from the premises described in said lease, in the manner as in said lease provided. Defendant admits that said lease was recorded on the date in the Book of Conveyances of the records of Caddo Parish, as set out in Article V of the bill of complaint.

VI.

Defendant denies the allegations of the plaintiff, that it, and the Producers Oil Company had, or have, no right, title or interest in the lands involved herein, but avers

that it, defendant, is the true and lawful owner of the said land, and that the oil produced and saved therefrom by its lessee, the Producers Oil Company, which
32 will be hereinafter shown, inured to the benefit of the Producers Oil Company and of defendant, and was lawfully sold for the account of the Producers Oil Company and defendant under the provisions and conditions of the mineral lease aforesaid, in the proportion, and in the manner, as will be hereinafter set forth.

Inasmuch as gas was not produced from said land, it makes no statement therefor.

VII.

Defendant denies that it is unlawfully trespassing upon the lands involved herein; but, that it is the true and lawful owner of said lands, and that under the mineral lease it has executed to the Producers Oil Company, that its lessee is lawfully upon said tracts of land, forming a part of the lands described in the mineral lease aforesaid, and that its lessee intends to drill other wells as it may deem proper, in its judgment and that of defendant, to operate thereon for the production and development of oil or gas, and to dispose of, or cause to be disposed of, all oil or gas so produced, or that may hereafter be produced, from, or on, the property in controversy, or found there beneath, as it and its lesses has, or has had at all times, a lawful and valid right so to do. Defendant further denies the right of the plaintiff to restrain it or its lessee, the Producers Oil Company, by order of Court or by writ of injunction emanating therefrom, from further operating on said lands, herein involved, or that plaintiff herein will be irreparably damaged thereby, if said orders of Court or writs of injunction, be denied to it, or by any act or conduct of this defendant or its lessee.

VIII.

Defendant denies that it has no right, title or interest in the lands, involved herein, but avers that it is the true and lawful owner of said land, deriving the title thereto, as will hereinafter more specifically be set forth, and that the oil produced and sold therefrom by the Producers Oil Company, the lessee of the defendant, inured to the benefit of defendant and its lessee, and the proceeds of the sale thereof distributed in the proportions
33 and in the manner and form as will appear hereinafter.

Defendant admits that oil has been produced and saved from said land, but denies that any gas was produced therefrom in any appreciable quantity, or at all. Defendant admits that the oil taken from said tracts of land, in controversy, and the oil produced and saved therefrom exceeds one hundred thousand dollars ($100,000).

IX.

Defendant avers that it acquired, through mesne conveyances, the lands described in said lease, and of which the land, in controversy, formed and is a part of the description therein and thereof, from the Heirs of Stephen D. Pitts.

That the said Stephen D. Pitts acquired the said fractional SW ¼ of Section 10, T. 20, N., R. 16, W., under and pursuant to the Act of Congress approved May 20, 1862, "To secure homestead to actual settlers on the public domain", and acts supplemental thereto, from the United States, by issuance of patent therefor dated April 2, 1860, according to the official field notes, and plat of survey of the General Land Office of the United States, and that said fractional SW ¼ of said Section 10, Township and Range aforesaid borders on and adjoins Jeems

Bayou, or Ferry Lake, or navigable body of water, and that at the date of the issuance of said patent, in accordance was the official field notes and plat of survey of said General Land Office aforesaid, and the entry thereof, by said patentee, the same bordered on said Lake, a navigable body of water, and that said Lake, or navigable body of water, was and is the boundary line of said fractional SW ¼ of Sec. 10, T. 20 N., R 16 W., aforesaid, and that the same was not bounded by any meander line; the actual boundary line of the said SW ¼ of Section 10, as patented by the United States to Stephen D. Pitts, bordering on said navigable body of water, extended to and was and is bounded and limited, by the ordinary or mesne high water of said Jeems Bayou or Ferry Lake, at the time of the admission of the State of Louisiana into the Union, leaving no land in the ownership of the United States between said meander line and the ordi-
34 nary high water of said lake, or navigable body of water, and that the Department of the Interior was without jurisdiction, power or authority to cause said tracts of land, in controversy, to be surveyed.

Defendant avers that the original survey executed by A. W. Warren, Deputy United States Surveyor in 1839 and Byron B. Bristol, Deputy United States Surveyor in 1871, correctly delineated the high lands above the mesne high water mark of Jeems Bayou and Ferry Lake, at the dates of their respective surveys.

Defendant avers that the United States patented and issued Certificate No. 16,563, to Stephen D. Pitts, according to the provisions of the Act of Congress of April 24, 1820, entitled "An Act making further provision for the sale of the public lands, the southwest fractional quarter of section 10, T. 20, R. 16 west, in the District of Lands subject to sale at Natchitoches, Louisiana, containing twenty-three acres, according to the Official Plat of the Survey of the said lands returned to the General Land

Office by the Surveyor General, which said Tract has been purchased by the said Stephen D. Pitts. Defendant avers that the Southwest Fraction one-quarter of Section 10 T. 20 R. 16 W., as aforesaid, was erroneously declared in the aforesaid patent to contain twenty-three (23) acres, when in truth and in fact it contained 55.88 acres, as is shown by the Official Plat of the Survey of said lands, returned to the General Land Office by the Surveyor General . The United States by supplemental plat approved May 29, 1896, gives the area of Fractional Southwest quarter of Section 10, T. 20, R. 16 W., as containing 55.88 acres. That a United States Survey of Sections 4, 9 and 10 was made by Byron Bristol under contract of June 26, 1871, and approved August 18, 1871.

X.

Defendant avers that the United States, through its legally constituted authorities, has prior to the bringing of the instant suit, disclaimed any ownership, claim or interest in and to the lands in controversy.

On February 8, 1897, the Commission of the General Land Office, of the United States, wrote the following letter:

"February 8, 1897.

Hon. N. C. Blanchard,
U. S. Senate,
Washington, D. C.

Sir:

"I am in receipt of your letter dated February
35 1, 1897, indorsing one from Mr. M. L. Scovell, President of the Jeems Bayou Fishing and Hunting Club, dated Shreveport, Louisiana, January 25, 1897, covering a letter from Mr. J. P. Flournoy to Mr. Scovell, with enclosures consisting of the notes and plat of the

survey of a tract of land on Ferry Lake, in Sections 9, 10, 15 and 16, T. 20 N., R. 16 W., Louisiana, executed by Mr. J. R. Barbour, Surveyor of Caddo Parish, Louisiana.

"The survey made by Mr. Barbour embraces about 300 acres of land adjoining and outside the meander line of the official survey heretofore made in Sections 9 and 10 of said township.

"You state that the Club desires to know whether the lands (colored yellow on the map submitted) are claimed by the Federal Government, or whether they are State lands, the same being swamp and overflowed, and inquire what is necessary to be done to have them listed as State lands, also that it is desired to have Mr. Barbour's survey accepted as an official survey by the U. S. Surveyor General of Louisiana, or by this office. You state further that it is likely that at the time of the U. S. Survey of that country was originally made the lake covered the lands, and that they have been uncovered by the recession of the waters, and ask in what way the Fishing Club can acquire title to the lands.

"In reply I have to state:

"1. This office has no authority to accept a survey made by a county surveyor, its action in the matter of the acceptance of surveys is confined to such surveys as have been duly authorized by competent official authority, and executed by a duly appointed U. S. deputy surveyor, under contract with or instructions issued by the surveyor general and approved by law.

"2. An examination of the record shows that the public lands in Sections 9 and 10 represented upon the official plats, and in front of which the lands in question

have formed, have been entered by individuals, and patent has issued for some of the land. The official plat shows no unsurveyed land in the locality indicated by the map (accompanying Mr. Flournoy's letter), but that Ferry Lake was duly meandered and the surveys closed thereon, and any land which have formed between the meander and shore line of the lake since the survey and disposition of the fractional tracts bordering upon the lake, is not subject to survey and disposal as public land of the United States, under existing laws, and in this connection I invite your attention to the U. S. Supreme Court decision in the case of Hardin v. Jordan, 140 N. S. Reports, 371, also to the decision contained in the same reports on page 413, in the case of Mitchell v. Smole, where the following definition of an official plat of survey is given, viz: 'The difficulty of following the edge or margin of such projections, and all the various sinuosities of the water line, is the very occasion and cause of running the meander line, which by the exclusion and inclusions of such irregularities of contour produces an average result closely approximating to the truth as to the quantity of upland contained in the fractional lots bordering on the lake or stream. The official plat made from such survey does not show the meander line, but shows
36 the general form of the lake deduced therefrom, and the surrounding fractional lots adjoining and bordering on the same. The patents when issued refer to this plat for identification of the lots conveyed and are equivalent to have the legal effect of a declaration that they extend to and are bounded by the lake or stream, such lake or stream itself, as a natural object or monument, is virtually and truly one of the calls of the description or boundary of the premises conveyed; and all the legal consequences of such a boundary, in the matter of riparian rights and title to land under water

regularly follow.' The map and the papers indorsed by you are herewith returned.

Very respectfully,

S. WENDALL,
Commissioner."

See letter annexed and marked Exhibit "A."

The Director of the General Land Office of the United States wrote to the Secretary of the Interior in 1908 the following letter:

"November 6, 1908.

The Honorable
The Secretary of the Interior.
Sir:

"In connection with my letter of October 24 on the subject of the wanton waste of natural gas in the Caddo oil fields in northwestern Louisiana:

"I have the honor to advise you that a search made by the General Land Office shows that lands remaining in Federal ownership in the neighborhood of this oil field are as follows:

Township 20, North, Range 16 West; N E ¼ SE ¼ Sec. 1: SW ¼ of SW J Sec. 3 (For S ½ SW ¼ Sec. 3 see "C" Aug. 24, 1905).

Very respectfully,

GEO. OTIS SMITH,
Director."

Defendant avers that the United States as above shown has always heretofore disclaimed any title to the lands in controversy, and that it has only been since the discovery of oil upon the said lands that the United States has laid any claims to the same, and that at this late day after disclaiming ownership to the lands in contro-

versy and asserting that the same has passed into private ownership, that it is inequitable and unconscionable for the United States to change its position after private parties had improved the said lands in the utmost good faith and belief that they were the true owners, and
37 in making the same valuable had expended large sums of money upon said lands. That the suit brought by the United States is a very stale demand and not favored in equity.

XI.

Defendant avers that it, as aforesaid, leased the said tracts of land involved herein, to the Producers Oil Company, as per a lease dated October 17, 1910, whereunder there was granted and conveyed to the said lessee the right and privilege of exploiting and developing the same for oil and gas, and other minerals, for the consideration of $3600, paid to this defendant by the said lessee, and one-eighth (1/8) of all oil produced and saved from the leased premises, up to two hundred (200) barrels per well per day, and one-sixth (1/6) royalty on all produced and saved in excess of two hundred (200) barrels, and $100 per well per annum for gas, when said gas is sold and marketed off the premises, and one-tenth (1/10) royalty on all other minerals and defendant warranted its title to said land, and right to exploit the same for the purposes as are explicitly conditioned and provided in said mineral lease. Defendant avers that under said lease its lessee drilled on the leased premises—that is, on the S. W. ¼ of Section 10, T. 20 N., R. 16 W., and of which the lands, in controversy, form and are a part thereof eleven wells designated as J. B. F. & H. C. Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11. That the wells referred to in plaintiff's bill of complaint, Article III thereof, were drilled into oil and completed as follows:

No. 5, completed October 14, 1912;
No 6, completed November 2, 1912;
No. 7, completed December 13, 1912;
No. 8, completed January 13, 1913;
No. 9, completed January 28, 1914;
No. 10, completed March 4, 1914;
No. 11, completed February 2, 1916.

Well No. 5 ceased producing oil on March 30, 1917, and was thereafter abandoned.

That the total oil produced from said wells, under said lease on said fractional Section 10 amounts, to, from October 1, 1912, up to and including the 30th day of June, 1917, 437,787.80 barrels, and from and out of the said total amount of oil there was produced from the lands in controversy from said wells Nos. 5, 6, 7, 8, 9 and 10 and 11, from October 14, 1912, to and including June 30, 1917, the amount of 215,602.20 barrels of oil, of the value of $251,030.10.

38

That the proceeds of the sale of the oil so produced and saved from said wells Nos. 5 to 11, inclusive, were distributed, under the terms of said mineral lease, to-wit:

Producers Oil Company, 188,777.22 barrels of oil, sold for and at the value of $219,666.15; Jeems Bayou Fishing and Hunting Club, 27,825.28 barrels of oil, sold for and at the value of $31,366.95.

Defendant in the alternative specially avers that its lessee, the Producers Oil Company has expended in the cost and expenses paid by it for the drilling and equipping said wells—Jeems Bayou Fishing and Hunting Club Nos. 5, 6, 7, 8, 9, 10 and 11, sums amounting to Forty-five Thousand Six Hundred Thirty-Two & 99/100 ($45,632.99) Dollars, and that the operating expenses incurred and paid in maintaining said wells and handling their pro-

duction amounts in the sum of Sixty-three Thousand Seven Hundred Twenty & 52/100 ($63,720.52) Dollars, making a total cost and expenditure of One Hundred Nine Thousand Three Hundred Fifty-Three & 51/100 ($109,353.51) Dollars.

XII.

Defendant further avers that it acted in good faith, and in the belief that the title and ownership of said lands validly and legally vested in it, and that so believing, it has held the possession of said lands for many years, that it leased the said lands in controversy, to the Producers Oil Company, and that its lessee has entered upon the lands and drilled in absolute good faith the seven (7) wells, Jeems Bayou Fishing and Hunting Club Nos. 5 to 11, inclusive, upon said lands under a good and valid lease from defendant; and that, in the event it should be held that the plaintiff is the owner
39 of said tract of land, designated as Lots Eight (8), Nine (9), and Ten (10), Section 10, T. 20 N., R. 16 W., in the bill of complaint, Article 1 thereof, that defendant's lessee, the Producers Oil Company should be, and is, entitled to be reimbursed the entire cost and expenses of drilling and equipping each of said seven wells, Nos. 5 to 11, inclusive, and the expenses of operating and maintaining said wells, or any of them, as aforesaid, before the said Producers Oil Company can be held liable for any oil extracted therefrom.

Wherefore, having made full and complete answer to all the matters and things contained in the bill of complaint, this defendant prays the said bill be dismissed, and for judgment for its costs in this behalf incurred.

In the alternative, in the event this Court should hold that the plaintiff is the owner of the tracts of land, or property in controversy, this defendant prays that its

lessee, the Producers Oil Company, may be adjudged not liable to plaintiff on account and for the oil taken or extracted from said property, until plaintiff shall have reimbursed defendant's lessee, the Producers Oil Company, for the costs and expenses of drilling, equipping and maintaining said wells from which oil was produced and saved, and all the incidental charges in handling, preserving, storing, transporting and selling of said oil, and, that, in any event, if this relief be refused or denied, that it be adjudged that the costs and expenses of drilling, equipping and operating said wells, or any of them, being in excess of the total value of the oil produced therefrom, that this defendant or its co-defendant, or either of them, are not to be held liable to the plaintiff in and for any amount.

And, finally, defendant further prays for all necessary and proper orders in the premises and for general, special and equitable relief, and for all such as it may in equity and good conscience be entitled to from the facts and the evidence which may be adduced on the trial hereof.

BLANCHARD & SMITH,
Solicitors for the Jeems Bayou
Fishing and Hunting Club.

40 Indorsed:—The answer of the Jeems Bayou Fishing and Hunting Club to the Bill of Complaint. Filed Mar. 18, 1918.

41 ORDER OF REFERENCE TO SPECIAL MASTER.

This case now being at issue, the Court considering that the services of a Master are necessary to aid the Court and economize its time, and for the purpose of expediting the final hearing of said cause, the Court of its own motion appoints Edward H. Randolph, Esq., Special Master herein.

It is further ordered that this case be referred to said Master to take the evidence and report his findings of fact and conclusions of law thereon.

The said Special Master is authorized to set the case for hearing at such time and place as in his opinion may be most convenient to all parties, and he is authorized to hear the evidence within the jurisdiction of the Court or elsewhere as may be advisable.

RUFUS E. FOSTER, Judge.

March 29, 1918.

Filed Mar. 29, 1918.

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42 NOTE OF EVIDENCE.

Evidence taken before the Honorable E. H. Randolph, Special Master, in the above cause, commencing on April 22nd, 1918, in the United States Court room at Shreveport, Louisiana.

R. B. Cook was appointed Stenographer, to report the evidence and qualified by taking the proper oath.

Appearances:

Hon. R. A. Hunter, appearing on behalf of the Government.

J. Hampton Story, appeared for the Producers Oil Company and the Texas Oil Company.

Messrs. Blanchard & Smith, appeared for the Jeems Bayou Hunting and Fishing Club.

Evidence on Behalf of Plaintiff.

Counsel for Plaintiff offered in Evidence the following documents:

1. A certified copy of letter of date September 27th, 1913, from the Commissioners of the General Land Office, to Mr. Arthur D. Kidder, Supervisor of Surveys.

Defendants interpose the following objections to the admissibility of the surveys of 1913-1914, March 28, 1917, and of its field notes and plat, made under authority of the Department of the Interior of the United States, on the grounds as follows, to-wit:

1.

Because of its incompetency, irrelevancy and immateriality.

2.

On the further ground that the said survey, so made, was beyond the authority, control and jurisdiction of said Secretary of Interior, in this, that the land described as Lots Eight, Nine and Ten of Section Ten,
43 Township Twenty North, Range Sixteen West, were not included and embraced in the Executive

Orders of Withdrawal dated December 15, 1908, and July 2, 1910, respectively.

3.

On the further ground that the said survey purports to be a corrective resurvey of Section Ten, Township Twenty North, Range Sixteen West, embracing lands, as alleged and described in the bill of complaint as Lots Eight, Nine and Ten, the title to which was not in the United States at the time of said survey, but was, and is now, in private ownership having passed by patent of the United States to S. D. Pitts, according to the official survey, field notes and plat of A. W. Warren, United States Deputy Surveyor, in 1839, and approved by the Commissioner of the General Land Office on August 31, 1839, and from Pitts passing through mesne conveyances to the Jeems Bayou Fishing and Hunting Club, one of the defendants herein.

4.

On the ground that said survey of March 28, 1917, being made subsequent to the official survey of A. W. Warren, United States Deputy Surveyor, in 1839, and of the time of the issuance thereon of patent to the Fractional Southwest Quarter of Section Ten, Township Twenty North, Range Sixteen West, that the plat of survey of Warren showing that the fractional quarter of said section borders on Ferry Lake, or Jeems Bayou, and for which said reason the surveys of 1913-14 March 28, 1917, is inadmissible to show that title to any lands lying between the fractional quarter section and the waters of Jeems Bayou or Ferry Lake, remains or is in the United States, and further, that said survey, if admitted, would, in effect, deprive S. D. Pitts and his assigns of the land lying between the meander of said fractional quarter sec-

tion and Jeems Bayou, or Ferry Lake, acquired and vested under said patent, bottomed on the approved official survey of A. W. Warren, United States Deputy Surveyor.

5.

On the further ground that the said surveys of 1913-14 and March 28, 1917, were made prior to such date, are incompetent to impair, contradict, reconstruct 44 explain or impeach the verity of A. W. Warren's official survey, field notes or plat, or of the patent, to which the same had been issued to S. D. Pitts, and to affect, abridge or deny the exercise and enjoyment of the access and approach to the water of said Jeems Bayou, or Ferry Lake, or of any riparian rights accorded to said property bordering on said Ferry Lake under the laws of the State of Louisiana.

6.

On the further ground, that the said purported corrective survey, or resurvey, is inadmissible, for the reason, that if admitted and given effect, it would deprive, abridge and deny to said S. D. Pitts and his assigns, without due process of law, all of his rights, title and interest, rights of property and privileges in said lands lying between the meander of said quarter section and Ferry Lake, acquired and vested by the patent issued by the United States in 1860, bottomed upon the approved official survey, field notes and plat of A. W. Warren, United States Deputy Surveyor, approved by the Commissioner of the General Land Office, in contravention to and in violation of the Fifth Amendment of the Constitution of the United States, and would, further, abridge, deprive, and deny to the said S. D. Pitts and his assigns, without due process of law, all of his, or their, rights, title and interest, rights

of property and privileges to the access to the waters of said Jeems Bayou, or Ferry Lake, accorded by the laws of the State of Louisiana, in violation of and in contravention to the Fourteenth Amendment of the Constitution of the United States.

7.

That the said surveys of 1913-14 and March 28, 1917, and all such notes are incompetent to show error, omission or fraud in the survey of A. W. Warren, United States Deputy Surveyor, made in 1839, and of the Bristol survey of 1871, if any, for the reason, that said errors, omissions or fraud cannot affect bona fide and innocent purchasers who have acquired the said Fractional Southwest Quarter of Section Ten, Township Twenty North, Range Sixteen West, on the faith of the correctness of said official survey of A. W. Warren, on which
45 the patent was issued; and, further, that no proof of omission, error or fraud is admissible as such is not specifically alleged in the pleadings or in the bill of complaint.

Objection overruled, and same goes to the effect of the evidence.

To which ruling of the Court, Counsel for Defendants except, and asks that this note stand in lieu of formal bill of exceptions.

Filed in evidence and marked Plaintiff's Exhibit No. 1.

Counsel for Defendants asks that this objection ruling and bill of exceptions be made general to apply to all evidence offered on this trial and it is so ordered.

2. We offer in evidence certified copy of letter dated December 1st, 1916, from the Commissioner of the General Land Office, approved by the Secretary of the Interior, to Mr. Arthur D. Kidder, Supervisors of Surveys.

Same objection, ruling and bill of exceptions.

Filed in evidence and marked Plaintiff's Exhibit No. 2.

3. We offer in Evidence, certified copy of plat of Survey of Township Twenty, North, Range Sixteen West, Louisiana Meridian made by A. W. Warren, Deputy United States Surveyor, August 31st, 1839, together with the table of contents and notation thereon. The Government reserving the right to show that there was manifest errors in the Survey made by Warren, with respect to the property in controversy in this case, and in other suits.

Same objection, ruling of Court and bill of exceptions.

Filed in Evidence and marked exhibits, Plaintiff No. 3.

4. Counsel for Plaintiff offers in evidence a certified copy of plat of survey made August 18th, 1871, by Byron Bradley Bristol of a Portion of Township Twen-
46 ty, North of Range Sixteen, West, Louisiana Meridian, together with all of the notations on said plat.

The Government reserving the right to show errors in said survey, with respect to the property in controversy in this case and in other suits.

Same objection, ruling and bill of exceptions.

Filed in evidence and marked Exhibit Plaintiff No. 4.

5. We offer in Evidence a certified copy of the field notes of the extension, subdivisional and Meander lines of Township Twenty, North of Range Sixteen west, made by Williamson Jones, Deputy United States Surveyor in 1837, Terrell and Warren in 1839,, A. W. Warren in 1839, George W. Morse in 1846, Robert Boyd in 1854, J. P. Parsons in 1871 and Byron Bradley Bristol in 1871.

Counsel stating the Government reserves the right to show errors in the surveys of said A. W. Warren and Byron Bradley Bristol with respect to the property in controversy in this case and other suits.

Same objections, rulings of Court and bill of exceptions.

Filed in Evidence and marked exhibit Plaintiff No. 5.

5. Counsel for the Government offered in Evidence the Index Plat of Township Twenty North of Range Sixteen West, Louisiana Meridian, entitled History of Original Surveys, certified under date of December 1st, 1916, by Clay Tallman, Commissioner, and Ex-Officio United States Surveyor General of Louisiana.

Same objection, ruling and bill of exceptions.

Filed in Evidence and marked exhibit Plaintiff No. 6.

7. We now offer in Evidence a certified copy of Plat dated May 29th, 1896, of Township Twenty North, of Range Sixteen West, Louisiana Meridian, being offered for the purpose of showing the lot numbers assigned to certain lands in Section Ten.

Same objection, ruling and bill of exceptions.

47 Filed in Evidence and marked exhibit Plaintiff No. 7.

8. Counsel for the Government offered in Evidence a certified copy of Resurvey plat of Township Twenty, North of Range Sixteen West, Louisiana Meridian, together with the memorandum and notation thereon.

Same objection, ruling and bill of exceptions.

Filed in Evidence and marked exhibit Plaintiff No. 8.

9. Certified copy of Supplemental Plat of Township Twenty North of Range Sixteen West, Louisiana Meridian, marked sheet No. 1, together with the notations thereon, said plat having been approved March 28th, 1917, by Clay Tallman, Commissioner of the General Land Office and Ex-Officio United States Surveyor General, of Louisiana.

Same objection, ruling and bill of exceptions.

Filed in Evidence and marked exhibit Plaintiff No. 9.

10. Certified copy of Supplemental Topographical Plat of Township Twenty north of Range Sixteen West, Louisiana Meridian, approved by Clay Tallman, Commissioner and Ex-Officio United States Surveyor General of

Louisiana, on March 28, 1917, together with the legend and other notation thereon, said plat being marked No. 10.

Same objection, ruling of Court and bill of exceptions.

Filed in Evidence and marked exhibit Plaintiff No. 10.

11. Supplemental plat of Township Twenty North of Range Sixteen West, Louisiana meridian, with the notations and memoranda thereon.

Same objection, ruling and bill of exceptions.

Filed in Evidence and marked exhibit Plaintiff No. 11.

12. Supplemental Topographical plat of Township Twenty, North of Range Sixteen West, with the Notations and Memorandums thereon.

Same objection ruling and bill of exceptions.

Filed in Evidence and marked exhibit Plaintiff No. 12.

13. Hydrographic and Topographic map of a portion of Township Twenty, North of Range Sixteen
48 west, Louisiana Meridian, together with the legend, memoranda and notation thereon.

Same objection, ruling and bill of exceptions.

Filed in Evidence and marked Exhibit Plaintiff No. 13.

14. Certified copy of field notes of the re-establishment of the South, East and Northern boundary of Township Twenty, North of Range Sixteen West, Louisiana Meridian, known as Book "A" of field notes.

Same objection, ruling and bill of exceptions.

Filed in Evidence and marked Plaintiff No. 14.

15. Certified copy of field notes of the re-establishment of the boundary line between the States of Louisiana and Texas, known as book "B."

Same objection, ruling and bill of exceptions.

Filed in Evidence and marked exhibit Plaintiff No. 15.

16. Certified copy of the field notes of the re-establishment of subdivisional and meander lines in Township Twenty, North of Range Sixteen West, Louisiana Meridian, known as book "C."

Same objection, ruling and bill of exceptions.

Filed in Evidence and marked exhibit Plaintiff 16.

17. Certified copy of the field notes of the up land, lying between the erroneous original Meander line of Ferry Lake, James Bayou and the actual mien High Water elevation of the lake in the year 1912.

Same objection, ruling and bill of exceptions.

Filed in Evidence and marked exhibit No. 17.

18. Copy of plat filed in the case of the Producers Oil Company vs. Lydia Hanson, et al., in the District Court, Parish of Caddo, Louisiana, which case was appealed to the Supreme Court of the United States, of the State of Louisiana, and the Supreme Court of the United States, said plat being attached to the transcript of ap-
49 peal filed in the Supreme Court of the United States.

Counsel for Plaintiff offers the plat, and it is understood that the defendants shall have the right to offer the transcript to which the same is attached.

Same objection, ruling and bill of exceptions.

Filed in Evidence and marked Plaintiff 18.

19. A certified copy of the Louisiana Tract book so far as it shows, Section Ten, Township Twenty, North of Range Sixteen West, Louisiana Meridian, made from the tract book on file in the General Land Office at Washington, D. C. The lot numbers shown in red ink on the copy of the tract book, were entered after the filing of the supplemental plat of March 28th, 1917.

Same objection, ruling and bill of exceptions.

Filed in Evidence and marked Exhibit Plaintiff 19.

20. Certified copy of tract book, from the United States Land Office at Baton Rouge, Louisiana, showing Township Twenty, North of Range Sixteen West, Louisiana Meridian.

Same objection, ruling and bill of exceptions.

Filed in Evidence and marked Exhibit Plaintiff 20.

21. Certified copy of Tract book of the State Land Office at Baton Rouge, Louisiana, of said Township and Range.

Same objection, ruling and bill of exceptions.

Filed in Evidence and marked Exhibit Plaintiff 21.

22. Certified copy of the Records of the United States Surveyor General's office, now forming a part of the State Land Office at Baton Rouge, Louisiana, showing all swamp selections in Township Twenty North of Range Sixteen West, Louisiana Meridian.

Same objection, ruling and bill of exceptions.

Filed in Evidence and marked exhibit Plaintiff 22.

23. Certified copy of withdrawal order dated December 15th, 1908.

Same objection, ruling and bill of exceptions.

Filed in evidence and marked exhibit plaintiff 23.

50 24. Certified copy of withdrawal order dated July 2nd, 1910.

Same objection, ruling and bill of exceptions.

Filed in Evidence and marked exhibit Plaintiff 24.

Counsel for the Government offers in evidence all of the documentary testimony offered by the United States,

in the matter of pleas filed by the defendants to the withdrawal orders in the case of the United States against Sam W. Mason, et al., No. 1172, on the Docket of this Court, and Counsel asks the Master to order that certified copies of said documentary evidence may be made by the Clerk and placed in the record. It is so ordered by the Master.

ARTHUR D. KIDDER, a witness for the Government, being first duly sworn, testified as follows:

On Direct Examination he said:

Q. Mr. Kidder, do you hold any official position with the United States Government, if so, what position do you hold?

A. My position of that of Supervisors of Surveys, with the field surveys of the General Land Office, Interior Department.

Q. Is your work done under the direction and supervision of the Commissioner of the General Land Office?

A. It is.

Q. How long have you held the position of Supervisors of Surveys?

A. I have held the position of Supervisors of Surveys since July 1st, 1910.

Q. You are now holding that position?

A. I am now in that position.

Q. Your service in that respect, has been continuous from July 1st, 1910, to the present date?

A. It has.

Q. Are you a Surveyor, Mr. Kidder?

A. I am.

Q. Civil Engineer?

A. I am a graduate Civil Engineer, having
51 graduated with the Class of 1899 at Terre Haute, Indiana.

Q. Have you ever received a degree in Astronomy?

A. Yes, sir, that was based upon post graduate work in Natural Astrology studies, which led to the degree in Astrology in the University at Washington?

Q. In the University at Washington, D. C.?

A. Yes, sir.

Q. How long have you been in the Government service altogether?

A. I have been in the Government service since July 24th, 1900.

Q. In what respect did you enter the Government service, what capacity?

A. I first entered the government service as examiners Clerk in the Surveying division of the General Land Office in Washington and held that position from July, 1900, until the first of April, 1901, and at that time I was transferred to the field surveying service with the designation of examiner of surveys.

Q. How long did you continue to serve as examiner of surveys?

A. I had six years field work as Examiner of surveys, from 1901 to the season of 1906, inclusive.

Q. In what States did you perform your duties?

A. My work was very general in character and took me into a number of the Western States, including the states in the middle west, and the far west. Began work in Oklahoma, later went to South Dakota, later to Colorado, later to New Mexico, later to Minnesota, Michigan, Wisconsin, and Arkansas and had extensive work in Wyoming, Utah and Colorado, during the six years.

Q. Have you ever done any resurvey work?

A. For a period of three years, the seasons of 1907, 1908, and 1909, inclusive. I was engaged exclusively in

resurvey work in the State of Colorado. The condition of the surveys out there was such that quite a large number of Townships have been resurveyed in the last twenty years, and during my three years, when I was engaged in resurvey work, I resurveyed about forty Townships in Colorado. That work required complete identification of the original surveys, restoring and remarking of the lines, in accordance with the evidence on the ground, and the records of the original surveys, to restore the original surveys.

52 Q. Was any complaint ever made with respect to your resurvey work when you resurveyed those twenty townships.

A. I have no knowledge of a single complaint in the forty townships, in regard to the work.

Q. State whether or not you had Supervision of the Public Land surveys in 1910 in Colorado and Idaho?

A. By Act of Congress approved June 25th, 1910, there was a change in the System of conducting Public land surveys. That act of Congress provided for a salaried Corpse of United States Engineers to attend to all of the Surveys of the Government, of Public lands and in that connection I was made Supervisors of surveys, and my first jurisdiction was Colorado and Idaho, which gave me complete supervision of all the surveys in those two States.

C. What have you to say, with respect to the General supervision that you now have of all public land surveys?

A. My general Supervision is limited at the present time, to what we term the Eastern Department, which includes all public land States where former officers of the United States Surveyor Generals have been discontinued, which includes Florida, Mississippi, Alabama, Louisiana and Arkansas, and have a great deal of work in Michigan, Minnesota, Wisconsin and North and South Dakota.

Q. Have you had considerable experience in surveying?

A. I have given my entire attention to Public land surveys for the last Eighteen years.

Q. State whether or not you made a resurvey of Township Twenty North of Range Sixteen West, Louisiana meridian, being the Township in which the property in controversy is located?

A. I did, with the assistance of regular United States surveyors Mr. A. N. Kimmell and Fred. D. Spofford. We resurveyed, retraced and re-established all the lines, including the boundaries and subdivisional lines and meander lines of Township Twenty North of Range Sixteen West, Louisiana Meridian, and to complete that survey we marked the boundary line between Texas and Louisiana, through that Township.

Q. In making that survey, were you acting under instructions eminating from any source, and if so, from what official?

A. The field work was carried on under instructions contained in the office letter, issued by the General Land Office under date of September 27th, 1913. That letter outlined in detail all of the field work that was
53 to be undertaken by the parties.

Q. Is that the letter which was offered in evidence this morning?

A. It is.

Q. When was that resurvey made?

A. That resurvey was begun in October, 1913, and was completed in May, 1914.

Q. Please state who assisted you in making the resurvey above mentioned?

A. The chief parties who assisted me were A. N. Kimmell, United States Surveyor and Fred Spofford, United States Surveyor. We also employed a corpse of assistants. The chainmen were experienced chainmen, who had

been on other public land surveys, and who were brought in for the purpose of giving us experienced men, so as to have measurements that could be relied on. The flagmen and axmen were local men, employed for the period of the survey, and their names are all listed in the field notes, in the record of the survey.

Q. Were you Assistants competent men?

A. They were.

Q. Between October 1913, and May, 1914, did you make a survey of the bed of Ferry Lake, of Ferry Lake itself?

A. We made a hydrographic survey of the bottom of the bed of the lake. That was the first survey, to my knowledge, made of the bed of the lake. The border of the lake had been shown on the previous maps, but prior to that time, there had been no survey, that I was acquainted with that showed the contour of the bed of the lake. We made a large number of soundings, connected by triangulations with fixed stations on the border of the lake, so as to make a complete map of the bed of the lake.

Q. Is the result of your work set forth in the evidence here?

A. No, the result of the work in the bed of Ferry lake is mapped, but only mentioned in a general way in the field notes.

Q. Did you make, at the same time, during the same period, a survey of any of the uplands on Ferry Lake, which had not been included in the previous surveys?

A. We were required and did execute such a survey of the up lands. The instructions under which we worked,
54 after having identified and re-marked the original surveys in that Township, we retraced also the meander line of Ferry Lake, as recorded in the field notes in the earlier surveys, and we re-marked that line and in that way we determined there was a

considerable area of up land lying between the previously meandered line, as shown by the field notes and the lake.

Same objection, ruling and exception as heretofore.

A. (Continued) After having developed the position and extent of the up land that had been omitted from the previous surveys, we executed what is called technically a topographical survey, so as to get the elevation over the entire area previously omitted, running a contour line at intervals of five feet in elevation. In that way we were able to map the topography and elevation of the land previously omitted.

Q. Did you make a topographical plat of your work?

A. We did.

Q. Has that plat been offered in evidence here?

A. That map was offered in evidence this morning and is the one on the stand now, marked Plaintiff 13.

Q. You refer to the Hydrographic and Topographic map of a portion of Township Twenty, North of Range Sixteen West, heretofore filed in evidence and marked Plaintiff 13?

A. I do.

Q. This plat represents the topography of the land surveyed by you, the up land?

A. It represents the topography of the up land that had been omitted from the previous surveys, also shows the bed of Ferry Lake and the streams, and channels running through Ferry Lake.

Q. I wish you would explain the meaning of the marks on this plat with reference to what they represent, what the green lines, brown lines and red lines represent?

A. The heavy black lines, marking the exterior of the sections are mapped in such a way as to reproduce exactly the position of the original survey in this Township,

being the Warren survey and the extension by Bristol in 1871, that extension being in sections Four, Nine, and ten. The red line on the map, everywhere indicates around the border of Ferry Lake where it was determined that the high water margin of the lake existed in 1812 when Louisiana was admitted into the Union, and in the year 1839, when the Township was originally subdivided. That elevation is contoured at an elevation of 173.09 feet above mien Gulf level.

The green line on the map, everywhere represents the present average high water elevation of the lake, which is now controlled by the dam at the foot of Ferry Lake.

The series of brown lines on the map, are contours, each contour showing the elevation everywhere the same along that particular line. These contours are spaced at intervals of five feet in elevation.

The blue lines on the map, are also contour lines, which we mapped for the purpose of bringing out the detail of the former streams and channels in the bed of Ferry lake. These contours are stated at intervals of one foot difference in elevation.

The black figures in each section represents the area in that particular section which had been returned in the official survey, and shown on the official plat of this Township in the years 1839 and 1871.

The red figures in each section signify the number of acres of up land lying between the meander line, as surveyed by Warren in 1839, and Bristol in 1871, and the true mean high water elevation of the lake, at the date of their surveys as determined in the examination and topographical survey made in the winter of 1913-14.

The green figures in each section represent the total number of acres in that particular section, actually submerged in the waters of Ferry Lake or Jaems Bayou, at the date of the surveys in this Township in 1839 and 1871. The relation of the various areas to the survey, was all

made with respect to the elevation of the lake at the date the Township was originally subdivided in 1839. The elevation of the lake in 1839 was 173.09 feet, above mean Gulf level. The examination indicated that the lake was in existence in 1912, when Louisiana was admitted to the Union, and that the elevation in 1912, was the same as in 1839, and that the elevation in 1871 was the same.

The examination further showed the recission of the waters from the 173.09 foot contour down to the 167 foot contour, occurred after the year 1871. In making reference to the examination I have made general reference
to the work executed by the Surveying party, and
56 the special expert reports and conclusions reached
by the Ecologist and Geologist, who were engaged in expert work around the border of Ferry Lake, during the period of the survey of 1913-14.

The map also represents, for the information of the Department the position of certain oil wells and other well locations in the Township, on the land omitted from the original surveys of 1839 and 1871. It also shows some near by wells on the adjacent land, that had been surveyed and patented. The map also shows the position of the town site of Mooringsport, the section line and the lake border.

Q. What section is Mooringsport?

A. Mooringsport is in Sections Twenty-Five and Thirty-six. The map also shows work in Section One, on the border of Clear lake similar in character to that around the border of Ferry Lake and work along Jaems Bayou, in the western part of the Township. The map also shows the true boundary line between the States of Texas and Louisiana. The map also shows the position of certain detailed studies made by the ecologist, and these areas are shown as smooth blue numbers

one to six around the border of Ferry lake, James Bayou and Clear Lake. The Ecologist studies were conducted by Mr. L. L. Janes, at that time with the Department of Agriculture, he having been detailed for special study, and to co-operate with the surveying party from the Interior Department.

I will also add that the map was produced with a view of bringing out and mapping the studies of the Geologist, who had been detailed by the Department of the Interior to make a study of the geological features and formations in this Township. That work was begun by Mr. George C. Matson, of the United States Geological Survey and was concluded by Mr. Frank Leverett, also of the United States Geological survey. He made special studies, under the direction of the Director of the Geological Survey, with the purpose of arriving at a scientific conclusion, based upon expert studies of the geological features of the Township, especially with regard to whether or not the lake existed in the year 1912, and if so at what elevation that lake occupied in 1812 and 1839.

Q. In your survey of 1913-14, did you establish the mean high water mark of Ferry Lake, as it existed in the years 1812 and 1839?

A. We did establish that elevation. That
57 work was essentially a co-operative work between the Geologist, Ecologist and the Surveyors. Independent studies made to determine the elevation of the lake, as it existed in 1912 and 1839, and the various studies led to the same conclusion, and having reached the conclusion, we remarked that elevation 173.09 feet above mean Gulf level, by running out the contour line around the entire border of Ferry Lake.

Q. How is that Contour marked upon this Hydrographic and Topographic map?

A. Marked with a red line.

Q. State whether or not, Mr. Kidder, you accompanied the Geologist and Ecologist, and whether you were present during their execution of that work?

A. I was present with both the Geologist and the Ecologist, during practically all of their work, especially with respect to mapping all detailed studies, they had engaged in as experts. A great deal of the preliminary work was of a recognizance nature. I accompanied the Geologist and Ecologist in recognizance work in making general studies along the border of Ferry lake, which was necessary to develop the question that they had to answer. There were two particular questions brought out. The first question, whether or not the lake existed in 1912, and if so at what elevation. The Surveying party had three questions to deal with, that was if it was shown by expert study, that the lake existed in 1812, and if we determined that it existed to then develop the elevation and position of the border of the lake as it existed in 1812, and it was up to the Surveying party to determine whether or not the Warren meander line, surveyed in 1839, agreed with the true border of the lake as it existed in 1812 and 1839. I accompanied the Geologist and ecologist in all of their detailed studies and in most of their recognizance work, and where there was any mapping to be done, there was a Surveying crew present to execute the work.

Q. Mr. Kidder, in making your survey and resurvey of the up land in 1913-1914, what did you find with reference to whether or not the Warren meander line, as established in 1839, agreed with the true mean high water mark of Ferry Lake?

A. We found after completing the identification of the exact position of Warren's survey, having marked his terminal points of the section lines throughout the entire Township, that each and every section line was terminated on or practically

58

on the mean high water of the lake in 1839 the date that Warren made his survey.

Q. Will you illustrate that on the plat?

A. Warren began his work in Section One and terminated the Eastern Boundary of the border of Ferry Lake, almost precisely on the 173.09 feet contour. I might qualify my statement by saying that when I refer to the 173 foot countour, that it means the same as referring to the 173.09 foot countour, the difference of 9-10th being immaterial. Warren terminated his Eastern boundary of section 24 at the quarter section corner. This point was also practically on the 173 foot contour, not more than two feet above it. Warren's Eastern boundary on the South side of the lake, Section Thirty-Six was terminated practically on the 173 foot contour. An examination of the map shows the distance of five chains, or three hundred feet in horizontal distance, but it is flat there, and there is no difference in elevation whatever. On the Southern boundary of Township, the Southern boundary of Section thirty-two, the terminal point was established on a sloping bluff, just above the 173 foot contour, and a very short distance horizontal from it. On the line between Sections Thirteen and Twenty-four, the terminal point of the Warren survey, in the section line is practically on the 173 foot contour. The same may be said of the terminal point between sections Twelve and thirteen. The horizontal distance and the difference in elevation between the actual point of Warren's meander corner between Sections Twelve and thirteen, and the true border of the lake is absolutely negligible. The same may be said of Warrens corner of Sections Twelve and Thirteen, the Meander line. The mean high water elevation of the lake, as determined in the general examination by the Geologist, Ecologist and the Surveying party agree with where Warrent must have found the border of Ferry

Lake. On the Eastern boundary of Section Ten, Warren's Meander corner between sections ten and Eleven, is actually located, precisely on the 173.09 foot contour, no difference in horizontal distance, no difference in elevation. Warren surveyed a portion of the boundary line between Sections Three and Ten and concluded his survey when he intersected an arm of James Bayou. The point where he established his meander corner, we practically agreed, both in horizontal position and in elevation, with the border of Ferry Lake as determined through the scientic studies. On the Northern Boundary of Section Three, the position of the meander corner agrees with the 173.09 foot contour, to all practical purposes, the only difference being in horizontal distance and the difference in elevation being negligible. In a general way the same results were arrived at on the Southern part of the Township, fronting on the border of Ferry Lake. There is just enough difference to show the natural results of placing a meander corner, at the local point where the meander corner is established. These points vary only slightly in elevation. The meander corner between Sections thirty-two and thirty-three, is slightly below the 173 foot contour, but the difference in elevation and horizontal difference in position is negligible. Warren terminated the line between Section twenty-eight and thirty-three, almost precisely on the 173 foot contour; Warren's meander corner of sections twenty-seven and twenty-eight, is slightly above the 173 foot contour, but the local conditions there should be taken into consideration. There is a bluff and Warren's meander corner is established at the top of the bluff, which accounts for the difference in the elevation; Warren's meander corner between Sections Twenty-six and Twenty-seven, agrees very closely with the 173 foot contour, the difference in horizontal position and difference in elevation being

59

negligible. The same may be said of the meander corners, there are two, between Sections twenty-six and thirty-five. There is an embayment of Ferry Lake extending from Section twenty-six into Section thirty-five and Warren recognized this embayment and established meander corners on the Northern boundary of Section thirty-five, on the East and West side of this embayment, at practically the same elevation, where the scientific studies showed the border of the lake to be at the time of the Warren survey. The meander corner between Sections twenty-five and twenty-six, falls exactly on the 173.09 contour. On the line between sections twenty-five and thirty-six, the railroad grade of the Kansas City Southern Railway has destroyed the original conditions at the date of the Warren survey, but leading up to the railroad grade, as far as the natural surface conditions could be followed, we find that the 173 foot contour, brought on a curve would agree
60 almost exactly with position of Warren's meander corner, between Sections Twenty-five and Thirty-six.

Q. Point out the agreement between the Warren section line on the 173.09 foot contour, as established by you all over the Township as far as there is any agreement?

A. We found, after having retraced and re-established the Warren survey, and after having retraced his Meander lines and the angle points or turning points along these lines, that in some of the sections there was very close, almost perfect agreement between the mean high water elevation of the lake as determined by scientific studies of the Geologist and Ecologist, and the position of the Warren Meander lines. Warren meandered the border of Clear Lake in Section One. The black lines with the turns at the angle points determined by Warren, agree almost exactly with the 173 foot contour,

through that section. The Scientific studies showed that the elevation of Clear Lake agreed with the elevation of Ferry Lake and James Bayou. The positions of Warren's Meander line showed the same agreement. Following the border of Ferry lake and the direction in which Warren carried his Meander line of Ferry Lake and beginning at his point of the Eastern boundary of Section Twenty-four, we found every course at the beginning to agree closely with the 173.09 foot contour. There is a slight difference in horizontal position, but the lines are substantially parallel, and separated only a short distance horizontally, showing that Warren was actually following the border of the lake, for at least two courses with his meandor line in Section Twenty-four. The succeeding courses of Warren's Meander line, don't agree, in Section twenty-four don't agree with the 173.09 foot contour, or any other contour, and fails to agree with the Border of Ferry Lake as determined by scientific studies. The meander line, instead of following border ascend to much higher land, crossing a point and again returning to abont the proper elevation for the Border of Ferry lake. There are three courses of the Warren Meander line that agrees substantially with the 173.09 foot contour; Warren's last course in Section twenty-four was fifty chains in length, that is five-eights of a mile, at each end of this long course, there is an exact agreement with the 173.09 foot contour, but through the middle part of this long course, which is a very unusual length, the line extends into the
61 bed of Ferry lake, even several feet below the present mean high water of the lake—at one point this line is more than eight feet below the border of the lake as it existed in 1839.

I am referring to Plaintiffs map filed in evidence and marked exhibit "82 x "8" in connection with the map marked Plaintiff "13."

A. (Continued). In Section thirteen, the first four courses of Warren's meander line, from the Southern boundary of Section Thirteen, northward from fractional Section Thiteen, there is almost exact agreement with the border of Ferry Lake as determined by scientific studies. The balance of the Warren meander line in Section Thirteen is located apparently without regard to the true border of the lake.

(Witness also examines Plaintiff's Exhibit No. 10.)

A. (Continued). At one point in Section thirteen Warren's meander turning point is located at an elevation of seventeen feet above the border of the lake; continuing in section twelve, Warren having carried his meander line from the meander corner of sections twelve and thirteen, Northwest to the meander corner between sections eleven and twelve. There are in all eight meander courses. The first six, do not agree at all with the border of Ferry lake as determined by scientific studies, the last two agree very closely with the border of the lake, on the 173.09 foot contour. At one point in Section twelve, Warren's angle point is more than twenty-two feet in elevation above the level of the lake. Continuing along the border of Ferry Lake in Section Eleven, Warren's meandor line agrees substantially with the border of the lake as determined by scientific study. His meander courses cross and recross and are are substantially parallel with and the exact sinuosity of the 173.09 contour, entirely across section eleven. We now arrive at the Eastern boundary of Section ten, in which the land involved in this suit are located. I have previously testified that the meander corner of sections ten and eleven, as established by Warren falls exactly on the 173.09 foot contour. I have also testified, that his meander corner on the Northern boundary of Section ten

agrees closely both for horizontal position and elevation with the 183.09 foot contour. It would be natural to expect a Surveyor to run his meander line at the sale elevation he run his, or established his meander corners, that is to say his meander line itself should be
62 a substantial contour, should not be spread out from the true border of the lake more than a foot for horizontal position, or a few feet for elevation. The meander courses, above all other requirements should be substantially parallel with the contour which marks the true border of the lake; Warren ran a very irregular meander line in Section Ten. There are in all Twenty-four meander courses, with twenty-three angle or turning points. At no place in Section Ten, does Warren's meander line agree closely with the true border of Ferry Lake or James Bayou, excepting at his beginning point on the Eastern boundary of Section Ten and at his terminating point on the Northern boundary of section ten. The intermediate meandor courses will be found, up at a higher elevation than the border of the lake, and at several places at a lower elevation, and instead of following approximately the border of the lake the meander line twists and turns through wooded up lands, apparently without regard to the position of the border of Ferry Lake. In Section three, Warren has two meander courses crossing an embayment of Ferry Lake, being the red line on the map. Warren's third and fourth meander course in Section three ascends over a high point, the central point of which differs in elevation above the lake seven feet; Warren's fifth to eight, inclusive, meander courses, while not agreeing closely with the border of James Bayou, does not depart a very great distance from the 173.09 foot contour, except at one place, that being the sixth course, where apparently Warren has extended his line across an embayment. At this point there is a difference in elevation of about six

feet, Warren's meander line being that much too low. These four Meander courses may be termed a fair average of the ins and outs of the exact border of the lake. I have previously testified that on the Northern boundary of the Township the meander corners agree with the true border of the lake. In the Southern part of the Township, Warren began his survey on the meander line on the Eastern boundary of Section Thirty-six. The first two courses agree almost exactly with 173.09 contour. The balance of the meander line in Section thirty-six, ascends over high ground at two points, as high as twenty-seven feet above the lake level. His last course in Section thirty-six crosses an embayment of
63 Ferry lake and the difference in elevation is less than three feet.

The situation on Section twenty-five is a very unusual one. We found, in following out the recorded courses and distances of the meander line, that the first course ran into the lake, the second course extends into the lake, the third course extends into the lake; the fourth course returns to the point of land upon which the town of Mooringsport is located the fifth and sixth meander courses run down the middle of this point of land, on which the town of Mooringsport is located, and at the end of the sixth course, we find the point to fall actually south of the line between Sections Twenty-five and thirty-six. In other words he had crossed his own section line. The last meander course in section twenty-five, was a correct return to the border of the lake, as it connected exactly with his meander corner between sections twenty-five and twenty-six, which we found to be located exactly on the 173.09 foot contour, above mean Gulf level. I making a detailed study of this particular condition and having the advantage of the plat and topographical survey and map of this land, the surveying party determined that the four intermediate

courses of the Warren Meander line in Section twenty-five was substantially parallel with the 173.09 foot contour and this meander course should be adjusted along this bluff, in such a way as to agree exactly with the base of the bluff around the entire point on which the town of Mooringsport is located. This indicated to the Surveying party that Warren had actually followed the border of Ferry Lake around the point in Section Twenty-five, and there was some unexplained error in his field notes, showing some error in connecting the intermediate Meander course in Section Twenty-five with the Warren Meander corners on the South and Western boundary of Section twenty-five, and it seemed reasonable to the Surveying party that the Meander courses in this section could be adjusted to the base of the bluff, to the full extent to which we could find agreement between his courses and distances, and the actual contour, with the border of the bluff and this was done. The complete statement of the process leading to this adjustment is contained in the field notes of our resurvey, approved July 24th, 1916.

In the Eastern part of Section twenty-six there is one meander course only and that meander course
64 agrees exactly with the 173.09 foot contour. In Section thirty-five there is a close agreement throughout the entire section, between the Warren meander courses and the contour 173.09 above Gulf levels. In Section twenty-six, there are four courses in the Warren meander line. These three courses agree remarkably with the true contour of the lake, as determined by the result of the scientific studies. In Section twenty-seven, the first five courses of the Warren meander line, and they also agree closely with the true border of the lake; at angle point Number Five, Warren's meander line ascends to higher ground and traverses irregularly through the wooded up land, ap-

parently without regard tto the position of the border of the lake, a long distance from it and at the maximum elevation at the eighth Meander courses, Warren's meander line is thirty-sewen feet in elevation above the true border of the lake.. The elevation there on the contour is 210 mein Gulf level. In Section Twenty-eight, Warren's meander line agrees with the true border of the Lake; the same may be said in Section Thirty-three.

Q. Mr. Kidder, state whether or not, it is a fact that Warren's meander line im Section Twenty-eight and the section line between Secttions Twenty-eight and Thirty-three agree approximately, or exactly with the mein high water elevation as established by you and your associates, in your scientiffic studies?

A. There is an exactt agreement; Warren also meander the border of Ferry Lake in Section Thirty-two and his meander line agrees with the true border of the lake and his angle point one, is located almost exactly on the 173.09 foot contour. The second, third, fourth and fifth meander courses of Warren's meander line of section thirty-two, is an irregular line, extending over wooded up land, at one point reaching an elevation of twenty-seven feet above the border of the lake, as recognized by Warren, in terminating the section lines of his survey, on the line 173.09 foot contour; Warren's last meander course in Sectiion thirty-two, agrees with the true border of Ferry Lake, and at this point there is an embayment of Ferry Lalke, across the Southern boundary of Section thirty-two Warren terminated his meander line at the intersection with the Southern boundary of the Township at this point and failed to recognize or include in his survey, additional up land located in sections thirty-one and thirty-two, which were later surveyed by Robert Boyd, United States Deputy Surveyor, in 1854; Boyd's survey in 1854 embraced an extension of the Southern boundary

65

of the Township to the true border of Ferry Lake in Sections Thirty-one; Boyd surveyed the line between sections thirty-one and thirty-two, and Boyd also ran a meander line around the border of Ferry Lake along the margin of the parcel of land in Sections Thirty-one and thirty-two. Boyd's meander line agrees with the true border of Ferry lake, as represented by the 173.09 foot contour. Boyd consistently followed the top of the low bluff in these fractional sections, his meander courses are almost exactly parallel with the 173.09 foot contour, and only a short distance removed from it; Boyd found the same turning points or angle points along the meander line that are found along the exact contour.

Q. Mr. Kidder, what have you to say with reference to the land surveyed by Warren, on the west side of the section, west side of the Township in sections, five, eight, seventeen and twenty?

A. I am now referring to Plaintiff's Exhibit 3, which is the official plat of the Warren Survey approved August 31st, 1839, with reference to the question, in regard to the Warren survey, west of Jones Bayou, and I have to say that Warren carried his survey to the true western Boundary of the Township, which includes all the sections Six, Seven, and Eighteen, which are full and fractional sections, four, five, eight, seventeen, nineteen and twenty; I wish to call attention to the fact that Warren's survey was executed prior to the establishment of the boundary line between the State of Louisiana and the then Republic of Texas; Warren's contract required the completion of the exterior lines of Township Twenty North of Range Sixteen West, and a surveying of all of the section lines in the Township and all the meander lines in the Township around the border of Ferry Lake, James Bayou and Clear Lake. In 1841, two years after the execution of the Warren Survey, there was a Commission appointed representing

representatives of Texas and representatives from the United States Government to establish and mound the boundary line between the State of Louisiana, and the then Republic of Texas. This line was projected and crossed Township Twenty, North of Range Sixteen; it also crossed other Townships in the same Range to the North and South of Township Twenty North of Range Sixteen West. This determined for the first time that a portion of the Township as located by A. W.
66 Warren, was located in the Republic of Texas.
Accordingly the United States Surveyor General for Louisiana entered into a contract with George W. Morse, United States Deputy Surveyor to return to Township Twenty North of Range Sixteen West, and connected the Warren sectional lines with the monuments upon the State boundary line, and subsequently a plat was prepared of the George W. Morse survey and approved by the Surveyor General on July 24th, 1846. In this part of Township Twenty North of Range Sixteen West, Morse found the same agreement between Warren's section lines and the true border of the lake, that is to say Morse found that Warren terminated each and every section line exactly at the border of the lake, but Deputy Surveyor Morse found, upon examination that Warren's meander line through fractional sections five, eight, seventeen and twenty did not agree with the true border of Ferry Lake and James Bayou, and the plat approved July 24th, 1846, shows the meander line of Ferry Lake and James Bayou, as run out by Morse. This plat supercedes the plat of the Warren survey, west of James Bayou.

Q. Mr. Kidder, state whether or not in 1913, and 1914, you made a survey of the bed of Ferry Lake, and the up lands omitted from the previous surveys?

A. The survey in 1913, and 1914, of the up lands located outside of the Warren survey, was strictly a

topographical survey, and not a survey in the sense that we had to project lines and mark section lines for the purpose of identification and description of the different land, and was a topographical survey to show the character and elevation of the land, and the resurvey throughout the bed of Ferry Lake, we refer to as a Hydrographic survey.

Q. In 1916-1917 did you make a survey, officially of the up lands omitted from the Warren and Bristol surveys in this Township?

A. Yes, sir. The surveys of 1917-1917, should be referred to strictly as an extension survey, or amendatory survey, in which we extended the section lines, where those lines previously showed a termination by Warren and Bristol—we marked the lines on the ground by monuments, at the corners, and quarter section corners and marked the lines through the timber. In other words the lines are permanently established on the ground, for the purpose of identifing the up land, which had been omitted from the Bistol and Warren surveys, and we state the area on our play of the survey.

67 Q. What plat represents the extension survey?

A. The plat marked Plaintiff Exhibit 9, entitled Supplemental plat of Township Twenty, North of Range Sixteen West, Louisiana meridian is a graphic representation of the extension survey, approved March 28th, 1917, and shows the position and description of the area of the various subdivisions of up land, which we included in the extension survey, land that had been omitted from all previous surveys. The survey delineated on plat approved March 28th, 1917, Plaintiffs exhibit 9, was executed under special instructions contained in this letter dated December 1st, 1916, and a certified copy of those special instructions with the letter have already been

introduced as exhibits. This plat shows the total area of 617.21 acres of up land covered by this extension survey.

Q. You contend that all of this up land was above the level of the contour of the lake when Warren made his survey?

A. We do.

Q. Referring to the points of agreement between the Warren survey and the high water elevation, mean high water elevation as established by you. I will ask you to state whether or not the points of agreement are few in number or numerous?

A. I would say that the points of agreement are numerous.

Q. If A. W. Warren, Deputy Surveyor, when he made this survey in 1839 had run his meander lines through out the Township at the same elevation at which he terminated his section lines in the various sections referred to in your testimony, what would have been the effect of so running the Meander line, with respect to the land omitted from his survey, and included in your resurvey?

A. The effect, as a result of Warren running his meander lines around the border of Ferry Lake, at the same elevation, that he terminated his section lines, on the border of Ferry Lake, would have been to place his meander line substantially at the 173.09 foot contour, and to have included, in the Warren survey, the identical lands which are shown on the supplemental plat of March 28th, 1917; in other words the average elevation of Warren's meander corners agree almost exactly with the 173.09 foot contour, and if he had established his meander line on this contour he would have included the very parcels of land which he omitted and which was included in the extension survey of 1916-1917. There

68 could not in that event have been any disagreement between the Warren survey, and the survey of 1916-1917.

Q. You refer to the survey of 1916-1917, do you refer to the result of that survey as represented by the plat approved March 28th, 1917, introduced in evidence and marked Plaintiff Exhibit 9?

A. I do, nine and ten.

Q. If Warren had run his meander line, at the same elevation as shown, at which he terminated his section lines, would he have included in his survey the property in controversy in this case?

A. He would have included the exact land involved in this suit.

Q. Had he run his meander line along the border of Ferry Lake, at the same elevation at which he terminated his section lines, would he or not have included in his survey all of the lands shown on your plat of March 28th, 1917, as having been omitted from his survey?

A. In that event, Warren would have included, the very land shown on the supplemental plat.

Q. You have stated, as I understand your testimony, that at various places, throughout the Township, Warren's meander line along the border of Ferry Lake agree substantially to the true high water elevation, as established by your survey, did you not?

A. I did.

Q. If Warren had run his meander line throughout the Township at the same elevation at which that meander line agrees with the high water elevation as established by your survey, represented by the plat approved March 28th, 1917, would he in that event have included the land which he omitted from that survey, and which you resurveyed as shown by this plat?

A. Yes, he would have included all of the land shown on the resurvey play, the supplemental plat of March 28th, 1917.

Q. Would he, in that event have included the property in controversy in this case?

A. He would.

Q. Now, Mr. Kidder, when you made the survey in 1913-1914, did you re-establish any of Warren's lines, if so what lines?

A. The surveying party re-established all of the Warren section lines and meander lines in the entire Township Twenty North of Range Sixteen West,
69 Louisiana meridian. The surveying party also re-established, remarked and identified every line of the other official surveys in this Township.

Q. Is there a record anywhere in which these re-establishments were made?

A. There is that record that was introduced as Exhibit 3, book of field notes marked "A," ,"B" and "C," and which were given exhibit numbers and introduced in evidence this morning. They show a complete record of the field procedure in regard to the preliminary steps, before beginning and every step in the retracement of the lines, every step in remarking the lines and a detailed description of all evidence of original surveys that were found to exist in the Township, and a detailed, written record of the description of all of the monuments established, for the purpose of remarking these lines in the Township. The plat approved July 24th, 1916, is a complete delineation of the survey of Township Twenty North, Range Sixteen West, Louisiana meridian.

Q. What exhibit number is that plat?

A. Plaintiff's Exhibit 8.

Q. Now will you state in a general way, for the information of the Court, the method pursued by you in making your survey in 1913-1914 with respect to the

instruments you used, observations you made and manner in which you proceeded in re-establishing the lines of the previous surveys; also make a similar statement with respect to the survey made by you in 1916-1917, represented by the plat approved March 28th, 1917?

A. In the execution of the resurvey, as delineated on the plat approved July 24th, 1916, Plaintiff's Exhibit 8, the Surveyors followed the regular instructions issued by the General Land Office to field surveying parties, printed in the manual of Surveyors Instructions. We employed modern instruments, which were a part of the regular equipment of the General Land office. Preliminary to the beginning of the field work, these instruments were carefully adjusted in the field, and the meridian as established by observation on the North Star, Polaris, and the instruments used in the survey were carefully tested on Polaris, so as to have an exact agreement between the line indicated by the instrument and the line determined by Polaris observations. The instruments being known technically as Solar transits. The ordinary field observation running through from the
70 meander corner on one boundary of a section to the corresponding corner on the opposite side of the section. In this way we determined the exact location of Warren's meander courses and each and every angle point or turning point. In each and every section the Surveyors have to deal with what is known as the closing error. I will explain that, so as not to cause any confusion. After having fixed the fractional section boundary, in running across the section on the recorded courses and distances, on the meander line, the last point of the meander course very seldom agrees with the object, the meander corner on the boundary line. Perhaps the distance varies there for a few feet, or in some instances up as high as twenty-five or thirty feet. Trusting now to recollection I will say the closing error of Warren

in this Township was all very small, only a question of a few feet between the terminal point, running the courses and the objecting Meander corner, and whatever closing error there was in any particular section was distributed throughout the meander courses, therefore the proportion for any course is very small. This makes an adjustment showing the meander courses as marked on the ground, connect at both fractional sectional boundaries. Having made this adjustment, we monumented it at every angle point of the Warren survey. That completed the field work of the resurvey as shown on the plat approved July 24th, 1916, marked Plaintiff's exhibit 8.

Under instruction dated December 1st, 1916, the surveying party returned to the meander corner on the boundary between sections nine and ten, where Bristol had terminated his survey in the wooded up land. The section line was then extended through to where we established the corner of sections nine, ten, fifteen and sixteen. From this section corner there was projected to the East between Sections ten and fifteen, from the same section there was projected a line South between sections Fifteen and sixteen; from the same section corner there was projected the west line between Sections nine and sixteen. The surveying party also proceeded to the corners of section three, four nine and ten, as reestablished the original point having been established by Bristol in 1871. From this section corner the Surveying party projected to the North the line between sections three and four and terminated the line on the true border of James Bayou, as it existed in 1812, on the 173.09 were made on the
71 sum, which give us the true North and South line agreeing with the North and South line as determined by Polaris observations. The preliminary tests were very complete, so there could be no lack of agreement; steel tapes were used to measure the lines, which

tapes were also carefully compared with a standard steel tape, which is carried along by surveying parties for the purpose of detecting any error in the field tapes. After giving the preliminary tests, the parties proceeded to retrace the section lines of the original Warren Survey and other surveys in this Township, and in the adjacent Township. In the course of this work the surveying party connected with every known undisputed corner in the entire Township Twenty North of Range Sixteen west, and with other corners at a distance of two miles in the adjacent Township. These original undisputed corners were marked by the bearing trees of the original survey. The corner posts were gone but the bearing trees with the original surveys stood as living fixed evidence, witnessing the point of the original section corners. We made complete retracement in order to connect all previously identified, undisputed corners. We made a complete survey for the section corners, quarter section corners and meander corners in the entire Township and along the State boundary, for the purpose of bringing to light every possible evidence of the original surveys as marked by the trees in the original surveys. It developed that there were a considerable number of corners that could be identified, and there is a detailed description of them given in the field notes. There was also a large number of lost corners, in other words, no evidence on the ground, showing the exact position of the original Warren corners, but under the surveying rules we used the proportionate measurement and relocated all of the lost corners. In the process of the survey; we remarked all of the identified corners, and the additional points which we determined by proportionate measurements. This included the remarking of all of the meander corners on the border of Ferry Lake. After having fixed the position of the meander corners where the section lines terminated on the border of the lake, the surveying party then retraced Warren's meander

lines around the entire border of Ferry Lake, throughout every fractional section. In this work, following the courses and distances recorded in the Warren field notes, foot contour in Section thirty six the surveying
72 party proceeded to establish that part of the Northern boundary of section Thirty six, which had not been established in the Warren survey. The surveying party also proceeded to establish the boundary line between sections Twenty three and Twenty seven, in its entire length extending across up lands omitted from the Warren survey, no part of the line between sections Twenty three and Twenty seven having been established in the Warren survey. The surveying party then proceeded to mark the true border of Ferry Lake along the 173.09 foot contour, in such a way as to embrace the various portions of land that had been omitted from the Warren and Bristol surveys and in each and every case the connection was made to the Warren meander line, where we would be able to get an exact intersection on the Warren meander line on the contour of 173.09 foot contour, or else a short right angle connection where there was a slight difference between the Warren meander line and the true 173.09 foot contour. In that way we established the complete boundary of each and every tract omitted in the Warren survey.

We further proceeded to subdivide sections Twenty seven, section three, section ten, for the purpose of giving a better identification on the ground of the exact position of the various parcels or small subdivisions of the sections, described by lot numbers and shown on supplemental plat approved March 28th 1917, marked Plaintiff Exhibit 9. In that way we made a complete survey of the up lands omitted by the Warren and Bristol surveys, marking the lines on the ground for the purpose of future identification and furnishing data for platting these parcels of land, and giving the description by sectional numbers and

lot numbers, for the following of the extension survey, which was executed with the same care as required in all public land surveys; that is to say, we had the use of the equipment supplied United States Surveyors, which instruments were carefully tested before beginning the field work and kept in adjustment throughout the field work. In each and every case great care was exercised, that there should be no large closing errors in our own surveys, that is to show in the making of the plat of the sectional boundaries and showing the courses and distances in the Warren meander lines, and the courses of the contour 173.09 foot contour, with the extension of his lines across from one boundary of fractional section to the opposite boundary in the fractional section
73 there would be no such thing as closing error or else so small it would not be possible to show it on paper and done with such care that a remeasurement by any competent surveyor, would show an exact agreement between the courses and distances as recorded in the field notes of the Extension survey, and the actual monuments placed on the ground.

By Masters:—

Q. You may say you then did really reproduce the Warren survey?

A. I am prepared to say we retraced the original Warren survey with all the thoroughness, which was possible at this time to reproduce a survey made many years ago. We believe that we identified every particle of existing evidence of the original Warren survey, and where there was such evidence on the ground, we marked our corners in the exact point as evidenced by the evidence of the Warren survey, and the restoration of the lost corners, in each and every instance was made by proportionate measurements, so that any difference between the measurement determined in the resurvey should be distributed

along the section line in the Warren survey, each interval getting its part, between the measurement recorded in the Warren survey, and the measurement in the process of the resurvey.

The taking of evidence at this point was discontinued until Ten O'clock A. M. April 23rd, 1918.

April 23rd, 1918, all parties being present the taking of evidence in the above cause was resumed.

ARTHUR D. KIDDER, witness for the Government being on the stand his direct examination was resumed:—

By Mr. Hunter:—

Q. Mr. Kidder, yesterday evening when Court adjourned you were explaining, the manner in which you made the survey of 1913-1914, with special reference to the restoration of the Warren lines, I will ask you to state whether or not, in your opinion, you have reproduced correctly and accurately the survey made by A. W. Warren, in 1839?

A. I believe that the A. W. Warren survey has been reproduced as accurately and carefully as it is possible to do so at this late date. There were a consider-
74 able number of bearing trees marked by Warren Surveyor, which are still in existence, and which we had identified on the ground and used in reproducing the Warren survey, which gave us a number of fixed points which controlled absolutely the reproduction of the initial point. The surveying rules of proportionate measurement were adopted to adjust any difference between the measurements returned in the written field notes and those of the resurvey.

Q. Did you find any of Warren's bearing trees in Section Ten?

A. We did.

Q. Please indicate on the plat the total of such bearing trees.

(Witness examines plats).

Q. To what plats are you referring in pointing out the bearing trees of A. W. Warren in Section ten?

A. I am referring to the resurvey plat of Township Twenty North of Range Sixteen West, Louisiana Meridian, approved July 24th, 1916, filed in evidence and marked Plaintiff Exhibit 8. On the Eastern boundary of section Ten, at the point, at the quarter section corner between Sections ten and eleven, there are in existence today, standing on the ground, two bearing trees marked in the A. W. Warren survey. The tree in Section Eleven bears the original marks, or did bear the original marks on the date we visited the point. The tree in section ten is standing and in good condition, except that the marks have been chopped out and rotted away. At the corner of Sections Two, Three, ten and eleven, the North East corner of Section ten, we depended upon the sworn returns of W. E. Martin, a local Surveyor, who had identified three of the Warren bearing trees, and at this point of the original corner, with respect to the three bearing trees, we introduced the sworn statement of Mr. Martin, into the field note record of the survey. These were the only points on the boundary of Section ten marked by Warren.

By Master:—

Q. You identified the points from the measurements and the bearing trees?

A. Yes sir. I would like to read into the record the field notes of the Warren survey. I refer to Plaintiff's Exhibit 5, which contains the field notes of the Warren survey, page 21. There is recorded the position of the bearing trees at the Quarter corner between sections ten

and eleven. The field notes, reading on the bot-
75 tom of the page, Forty chains quarter section post. Post Oak twenty four inches South 87 W 7 links. Do 6 inches South 86 E 10 links. These field notes are very much abbreviated. I can explain with respect to the first tree. It means that the Surveyor marked a post oak tree, which was twenty four inches in diameter at the date of the Warren survey, and that from the quarter section post the bearing of the tree was South eighty seven degrees and the distance from the post to the tree was seven links. The tree in Section eleven was also a Post Oak, six inches in diameter at the date of the Warren survey, and the bearing from the corner post to that tree was South eighty six degrees, east a distance of ten links. Referring now to the field notes of the resurvey, executed in 1913-1914, book "C" Plaintiff's Exhibit 16, on page 22, I will read into the record a record of the identification of the old bearing trees at the quarter section corner, between sections Ten and Eleven.

"Thirty-nine chains, ninety-nine links, set an iron post, 3 feet long, 1 inch in diameter, 30 inches in the ground, for quarter section corner, with brass cap marked, 1914, one quarter on North, South 10 on W., and S 11 on E half; from which, the old bearing trees. A Post Oak stump, eleven inches in diameter, bears South eighty six degrees, East ten links distance, marked 1-4 S. The tree top is lying on the ground having been blown down this year; on the stump I find the old blaze and marks, and I am able to count seventy one ring growths outside of the surface of the old blaze.

The trunk of a post oak, thirty one inches in diameter, bears South eighty seven degrees no minutes W.. seven links, distant; the old blaze is in evidence, but the marks are now gone; I am able to count seventy four rings growth on the section outside of the surface of the old blaze.

The bearing and notes indicates an exact reproduction in remarking on the ground of the quarter section corner between sections Ten and Eleven, in the identical position in which each established in the Warren survey.

Q. You are absolutely satisfied then, of the location by you of the bearing trees you have mentioned?

A. I am absolutely satisfied in that respect and I believe any Surveyor in the oil field will agree that is an undisputed corner.

76 Q. You do not think then, that any surveyor would question the correctness of your findings in that respect?

A. I believe that is without question.

Q. Will you please point out again on the plat, the position of the bearing trees you have just mentioned?

A. South East quarter of North East quarter of Section ten

Q. How far is that point from the mean high water elevation of Ferry Lake, as established by Warren, in his survey?

A. That distance, as shown on the Warren plat and the record of the Warren filed notes as nine chains exactly.

Q. Upon what page of the field notes, are those measurements found showing the distance from the bearing trees mentioned to the mean high water elevation?

A. Page 21 of Plaintiff's Exhibit No. 5.

Q. Referring to your field notes, what is the distance as determined by you, from the bearing tree you mention to the mean high water elevation, as established by you in your surveys?

A. That record will be found on page twenty two of Plaintiff's Exhibit No. 16, and the distance is also exactly nine chains.

Q. Having found, his recognized and undisputed point or corner as indicated by the bearing trees that you have

mentioned, is there any difficulty in running from that point to the meander line?

A. There is no difficulty at all.

Q. In order to run to the meander line and reestablish Warren's meander line, what was necessary?

A. It was necessary to set the instrument at the quarter section corner, which had been identified and run at the bearing which had been determined as Warren's bearing, for the North half mile of the line between Sections Ten and Eleven, projecting that bearing to the South, the exact distance called for in the Warren survey nine chains. That point fell exactly on the contour of 173.09 feet above mean Gulf level.

Q. State whether or not, with respect to the point mentioned, you established with mathematical exactness, the position of Warren's meander line, as established by him?

A. I can say, in that respect that the measurement used in the resurvey, was the exact measurement returned in the record of the Warren survey. Warren marked two bearing trees at the meander corner between fractional sections Ten and Eleven, which are recorded in page twenty two, of Plaintiff's Exhibit No. 5. These trees could not be found in 1913-1914, but the distances measured from the identical corner, adopted in the resurvey, was the same as recorded by Warren, and the bearing of that line is the same as the North half mile between Sections Ten and Eleven, with the fixed points of the Warren survey to determine the exact bearing of the North half mile between Sections Ten and Eleven. That is there is evidence on the ground, as the quarter section corner of Sections Ten and Eleven, which is at the South East corner of the North East quarter of section Ten, and there is evidence on the ground of the position of the corner of sections Two, Three, Ten and Eleven which is

77

the North East corner of the North East quarter of Section Ten. In that way, I think that the point for the meander corner of sections Ten and Eleven on Ferry Lake was reestablished with mathematical precision, and the point redetermined in the identical position where it had been originally established in the Warren survey.

Q. Now having established, with precision Warren's meander line at the point just mentioned, what effect does the reestablishment of that meander line have, with reference to the mean high water elevation as found by him, at other points on the lake?

A. That same elevation agrees with the elevation of the other meander corners established in the Warren survey. There are nineteen meander corners in the whole of Township Twenty, North of Range Sixteen West, on Ferry Lake and James Bayou and Clear Lake, established at the time of the Warren survey. The average elevation of all of those points established by Warren, both to the East and west of the meander corner between Sections Ten and Eleven, is very near 173.09 foot contour, which is the exact elevation at the meander corner of fractional sections Ten and Eleven. Warren recognized the same shore features in every part of the Township where his section lines intersects the lake.

Q. Will you please state it, so that it may go in the record, the position of the nineteen meander corners to which you have just referred?

A. The position of the nineteen meander corners, are on the the boundaries of all of the fractional sections as follows: fractional sections one, three, ten, eleven,
78 twelve, thirteen, twenty four, twenty five, twenty-six, twenty seven, twenty eight, thirty two, thirty-three, thirty five and thirty six.

Q. Did you find any of Warren's bearing trees in any other portion of this Township?

A. We did. We found marked bearing trees at certain points, and at other points we found the stumps of the trees, but the original marks were gone.

Q. Indicate where you found the stumps and the trees where the original marks had been obliterated—did the position of these stumps agree with the positions of the trees as shown by Warren's field notes?

A. They did.

Q. Will you please state and read into the record, the places throughout the Township, where you found the original bearing trees.

A. With reference to the bearing trees marked exclusively at the time of the Warren survey, reading from Plaintiff's Exhibit No. 14 on page 26. At the position for the quarter section corner on the Eastern boundary of Section Thirteen, the original bearing trees: 'A post oak stump, twelve inches in diameter, bears South seventy two degrees, East, nine links distanct; the stump is about three feet high and burned. On page 27 at the same corner 'a post oak stump, twenty four inches in diameter, bears South sixty four degrees W., fifty six links distant, marked with part of the figure "4"; the stump is about 5 feet high and the old blaze had already been uncovered. On page 28 of the same Exhibit, at the quarter corner on the Eastern boundary of section Twelve, the original bearing tree 'A post oak, twenty inches in diameter, bears south twenty nine degrees west, seventy-six links distant, blown over and showing a portion of the figure 4 (of the 1-4) on North East side, exposed by being cut into by local surveyor.

On pages twenty eight and twenty nine of the same exhibit the field notes records shown the identification of the corners of Sections one, twelve, six and seven on the Eastern boundary of the Township, is based upon the sworn statement of W. E. Martin, a local surveyor who had identified the original stumps and taken them up

for exhibits before the Honorable E. W. Sutherlin, Judge of the First District Court, Caddo Parish, Lou-
79 isiana.

Q. Is Mr. Martin's sworn statement incorporated in the field notes?

A. Yes, sir.

Q. On what pages?

A. On pages twenty eight and twenty nine.

Q. Of what exhibit?

A. Plaintiff's exhibit No. 14. Referring to Plaintiff's exhibit No. 16, page eleven, will be found the record of the original bearing trees at the quarter corner between sections Twenty seven and Twenty eight. The record reads: "the original bearing trees A broken and rotted post oak stump, bears South eighty degrees E., twenty one links distant; A broken and rotted post oak stump bears North fifty one degrees W., fourteen links distant. On page twenty six, of Plaintiff's Exhibit No. 5, will be found the Warren record, which gives the same description of the trees as to species and courses and distances from the quarter section post.

Referring to page seventeen, of Plainaiff's exhibit 16, field notes of the 1913-1914 survey, at the quarter corner of section between section one and two, the record reads, "The original bearing trees. The decayed stump and root of a black oak, bears South 52 degrees no minutes East, 12 links distant; A post oak stump, twenty inches in diameter, thirty two inches high, bears South twenty degrees no minutes west, twenty two links distant, the old blaze is partly in evidence, but the marks are gone." Warren's field notes, page twenty of Plaintiff's exhibit No. 5 at the quarter section post., records these two bearing trees which agree for species and bearing and distance, from the one fourth post. As previously testified with respect to the corners of sections Two, Three, Ten and

Eleven, that I depended upon the sworn record of W. E. Martin local engineer in regard to his identification of the Warren bearing trees. This record will be found on pages twenty and twenty one of the field notes of 1913-1914, Book "C" Plaintiff's exhibit 16. I have previously testified and read into the record, the field notes of the Warren bearing trees at the one fourth section corner between Sections Ten and Eleven also the complete field notes of the identification of those bearing trees in the 1913-1914 survey. That completes the record of
80 the identification of the original Warren corners within this Township. There are however, other evidence of the bearing trees marked by Williamson Jones, on the Northern boundary of the Township, and Terrell and Warren on the Southern boundary of the Township. The United States and Texas Boundary commission on the western boundary of the Township. Also the evidence of the survey of Bristol on the line between sections Nine and Ten in Township Twenty, North of Range Sixteen West.

Q. Mr. Kidder, what is the significance of the bearing trees and the original evidence with respect to the reestablishment of the Warren survey?

A. The significance of the bearing trees is one of great importance. They absolutely control the relocation of the corners of the original survey. They are fixed marks on the ground which are recognized by the surveyor, above all other evidence of the survey, because they are marked at the time of the survey and upon the ground and are immovable.

Q. Do they or not, constitute in a sense live witnesses of the line run in the former survey?

A. They do.

Q. Well, having found and identified the original bearing trees, state whether or not, it was a different matter to reproduce the line of the Warren survey.

A. It was not considered a difficult matter except the process is a highly technical one, recognized by surveyors. The principle is based upon numerous Court decisions in suits involving boundaries, the principles are recognized by the Courts and surveyors and are carried out in this resurvey, and is known as one of proportionate measurement, adjusting the slight difference in the measurements as recorded in the field notes of the Warren survey and the measurements of the same line as determined in the process of the resurvey.

Q. State whether or not there is any substantial difference, in your opinion, between the Warren survey as reproduced by you and the survey of the actual lines as run by Warren?

A. I think there is no substantial difference, and that the reproduction, is as nearly the true location of the Warren line, as it is possible to reproduce them at this time.

Q. In making this resurvey, state whether or not you had modern and scientific instruments, and
81 whether it was executed in a scientific manner.

A. The surveying parties were equipped with the best instruments that can be found in the United States. The standard equipment of the United States Land Office, and were kept in perfect adjustment throughout the process of the survey, and great care exercised in the use of the instruments and measurements were made by experienced chainmen, with a steel tape, which had been compared with a standard steel tape and found correct.

Q. Was all of the work done under your direction and personal supervision?

A. It was.

Q. Were you present throughout the execution of this survey, on the land itself?

A. I was.

Q. What have you to say now, Mr. Kidder, with reference to whether or not you reproduced with scientific

precision the Warren meander line throughout section Ten, and throughtout this Township?

A. We have succeeded, I believe, in reproducing and remarking on the ground, the exact position of the Warren meander line as recorded in the field notes of the Warren survey. The disagreement in certain sections between the position of the meander line as run out in the process of the resurvey was based upon the recorded courses and distances of the Warren survey, and the actual margin of the lake, has left a very great doubt in the minds of the surveyors, as to just what extent the Warren meander line was actually surveyed in the field, actually run out. In those sections where Warren's meander line agrees with the actual border of Ferry Lake, the surveyors infer that Warren actually run his meander line, because his courses and distances agree with the courses and distances, that can be determined today, based upon the same shore markings. However, in those sections where there is a total disagreement between the position of the meander line, as run out on the ground, in accordance with the recorded courses and distances in the field notes of the Warren survey, and the position of the mean high water elevation of the lake, the surveyors have no means of determining whether or not Warren actually did or
82 not run out the meander line, as recorded in his field notes. There is no apparent reason, why he should run the meander line as recorded in the field notes in certain sections, as there is a total lack of agreement between the position of his meander line as run out on the ground and marked in accordance with the field notes of his survey, and the position of the border of Ferry Lake. There is a lack of agreement with any markings which would indicate the action of the water of Ferry Lake. There is a lack of agreement as to the timber growth. Warren's meander line in certain sections fails to follow or even approximate the contour line, as in certain sec-

tions, the Warren meander line as run out on the ground, in accordance with his recorded bearings and distances, ascends to ground many feet in elevation above the mean high water elevation of Ferry Lake, and in places his meander line descends into the bed of Ferry Lake, many feet below the true high water mark of Ferry Lake. The Surveyors, therefore, have no way of telling whether or nor the Warren meander line has actually been reproduced on the line; all the Surveyor can say is that they have reproduced on the ground, the meander line, as recorded in the field notes of the Warren survey.

Q. I show you resurvey plat of Township Twenty North of Range Sixteen West, Louisiana meridian, offered in evidence heretofore and marked Plaintiff's exhibit No. 8, and I will ask you to state whether or not this plat is true and correct, and represents the resurvey as made by you in 1913-1914?

A. This plat is an exact graphic reproduction of the resurvey executed in 1913-1914. It shows the exact positions of the fractional section boundaries, the courses and the distances along the boundaries of the sections as determined in the process of the resurvey. The plat also shows the exact position of the high water mark of Ferry Lake, as it actually existed at the date of the Warren survey, as determined by the Surveyors in the process of the examination and in cooperation with the special work of the Ecologist and Geologist to assist the Surveyors in the determination of the true position of the high water elevation of Ferry Lake during the raft period.

Q. You have already testified with reference to the hyprographic and topographic map of a portion of Township Twenty North of Range Sixteen West, Louisiana meridian, which has been offered in evidence and marked Plaintiff's exhibit No. 13, now I will ask you to state whether or not that map is true and correct?

83

A. That map is also an exact reproduction, at a larger scale, of the boundaries of the sections, as run out in the process of the resurvey; it also shows the out lying up lands omitted from the Warren survey, the elevation of the up lands omitted from the Warren survey, and the position throughout the Township of the margin of Ferry Lake, at its mean high water elevation, at the date of the Warren survey. It is the best graphic reproduction of the work of the resurvey that scientific draftsmen are able to make.

Q. Referring to Section Ten, Township Twenty North of Range Sixteen west, in which the lands in controversy are located, I will ask you to state, whether or not the Warren meander line, as described in Warren's field notes, of his survey was correctly reestablished by your survey of 1913-1914?

A. This line was correctly reestablished, in accordance with the field notes of the Warren survey. That is to say, the courses and distances of the Warren meander line, as recorded in the field notes of the Warren survey, were actually run out and marked upon the ground and adjusted to the boundary of fractional section ten, as previously identified.

Q. Mr. Kidder, referring to the survey executed by you in 1913-1914 I will ask you to state, whether or not, you established in that survey, the mean high water elevation of Ferry Lake, as it existed in 1912, when Louisiana was admitted to the Union, and in 1839 when the Warren survey was executed?

A. We did actually mark out upon the ground the contour line at the elevation of 173.09 above mean Gulf level, being the cooperative work of the Ecologist and the Geologist and the Surveyors, who determined upon what elevation as the nearest possible correct redetermination of the true level of Ferry Lake in 1912 and in 1839 based upon the evidence on the ground, which indicated the po-

sition of the high water mark of Ferry Lake, at those dates. The Ecologist, and Geologist and surveying parties depended wholly upon the evidence on the ground, consisting of the shore markings around the border of the lake, the timber growth, the belting of the forest species, with respect to certain species that are common to land that overflows a large part of each year—that
84 elevation of the belting of the forest trees, which are common to land which will not stand overflow. As previously testified the surveying parties depended wholly upon the special work of the Ecologist and Geologist with respect to the interpretation of such evidence of the position of the high water mark of Ferry Lake in 1812 and 1839.

Q. Will you please state the method pursued in determining the mean high water elevation at those periods?

A. I assume, in answering that question that you will call upon the Ecologist and Geologist to testify in regard to their own conclusions, in regard to the special details of their work, and will limit my answer to a general summary of their work as I observed it in the field, and as I cooperated with them in marking out the mean high water elevation of Ferry Lake as it existed in 1812 and 1839. I accompanied the Ecologist and Geologist in practically all of their recognizance work and made such surveys as they requested to enable them to make detailed studies of any particular feature. I want to state in my answer to your question, that we had no way of knowing where to place this mean high water elevation, without making special studies around the border of Ferry Lake. The Geologist depended upon the evidence of water action around the border of Ferry Lake, certain shore markings or escarpements, which he was able to pick up and follow, in a way that it may be difficult for a Surveyor to follow, unless pointed out to him. The Ecologist gave special attention to the study

of the forest growths around the border of Ferry Lake, and pointed out to the Geologist and the surveyor in the beginning a very noticeable belting of the timber, the cypress belting around the border of the lake, that extended down to the present waters of Ferry Lake, and extended up along the shore of the lake a distance of about six feet above the elevation of the present border of Ferry Lake. Above the cypress and along the contour line, bordering the limits of the cypress the Ecologist pointed out the growth of over cup oak trees and other species which would not germinate or grow upon land permanently cover by water—The surveying parties set certain stakes, as directed by the Ecologist and Geologist. The Geologist explained that he wanted these stakes to be set where he pointed out the shore markings that I have referred to. The Ecologist explained that he wanted
the stakes set at the margin between the cypress
85 timber growth and the overcup oak timber growth.
They handled between themselves and agreed upon the position of each stake, that is to say each stake was supposed to mark the position of these escarpements and to be located on the contour line between the oak and cypress. The surveying parties followed the directions and drove the stakes as requested by the Ecologist and Geologist. I personally accompanied the reconnoitering party. We proceeded around the border of Ferry Lake, and set a large number of stakes in that manner. The special scientific observers then requested the Surveyors to determine the elevation of each and every stake set in this reconnoitering expedition. We proceeded to determine the level of the stakes and found that they ranged very close to the same elevation. Out of the whole large number, there were few exceptions to the rule which the Ecologist and Geologist, concluded should not be considered as being a determinal point with respect to the general observation. In other words they eliminated a small per cent of the stakes, which did not show an agreement with the ave-

rage. After making a few eliminations the average elevation of the large number of stakes, set in that manner around the border of Ferry Lake, agreed within a few feet of the same elevation, or common average of all. Having determined the common average of all of the stakes, the special scientific workers requested the surveying parties to establish the contour around the entire border of Ferry Lake, James Bayou and Clear Lake, in Township Twenty North of Range Sixteen at that elevation. That contour was 173.09 feet above mean Gulf level. I want to say in completing my answer to the question that it was not until after some months of further special study, that the Ecologist concluded and the Geologist concluded that that contour line did actually represent the border of Ferry Lake in 1812 and 1839. The contour line, as established in the beginning was used as a reference line, from which further studies could be made and further deductions made as they through proper, but their studies led to the conclusion, that that was the proper mean high water elevation of Ferry Lake in 1812 and 1839, and in proceeding with the work of the surveying parties, in reestablishing the Warren meander corners, that I have previously testified about, the Warren meander corners on Ferry Lake all fell within a very short distance both for
86 elevation and horizontal position of this contour of 173.09 above mean Gulf level. That line marked on Exhibit No. 13 is the red line, and on Plaintiff's exhibit No. 8, it is shown as the dotted line, and marked entirely through the Township and reproduced exactly as it was run out on the ground.

Q. Who were the Ecologist and Geologist who assisted you in this work?

A. The Ecologist was Mr. Lionel L. James, then of the Agricultural Department; the Geologist, in the initial part of this work was Mr. George C. Matson, United States Geological survey, and he was later succeeded by Mr. Frank Leverett, of the United States Geological Survey,

who made special studies in co-operation with Mr. Matson, and additional studies independent of Mr. Matson, and he made special reports of his own conclusions.

Q. State whether or not the Ecologist and Geologist agreed with reference to the position of the high water elevation of the lake?

A. I understand there was an exact agreement between the Ecologist and Geologist, at the conclusion of their work. There was more or less uncertainty in the beginning, they both reserving statements of conclusions, until after they would have an opportunity to make a complete detailed study, not only of that Township of Ferry Lake but adjacent Townships, and in other localities along Red River which might throw some light upon the elevation of Ferry lake at the date of the Warren survey, and at the date that this State came into the Union.

Q. Did you run out on the ground, this contour of 173.09 feet along the line agreed upon by the Geologist and Ecologist, as representing the true mean water elevation?

A. I did.

Q. How did you arrive at the elevation above Gulf level?

A. In order to refer the elevation adopted in the resurvey to the datum of mean Gulf level, it was necessary for the Surveying party to make use of the bench marks previously established by the Army Engineers, who had carried the levels in from the Gulf of Mexico to this neighborhood. The established bench marks on Red River which we identified and used. They also established a bench mark in Section Twenty-five, Township Twenty North, Range Sixteen West Louisiana meridian, which is plainly marked on Plaintiff's exhibit 13. That bench
87 mark is permanently monumented by a monument set four feet under the ground, so as to be be-

low the frost line and there is a pipe leading from that stone to the surface of the ground with a cap on top, which can be removed furnishing access to the stone itself. The Engineering office at Dallas furnished a description of this monument and its elevation with respect to mean Gulf level, and we adopted that as the initial and standard bench mark in the survey in Township Twenty North of Range sixteen west. In that way was determined, by the levelling process, we carried the level of the bench mark to the contour marked around the border of the lake, and it was found to be 173.09 above mean Gulf level.

Q. When was the bench mark established?

A. Established in the year 1891 by the United States Army Engineers.

Q. Established by the United States Engineers?

A. Yes, established by the United States Army engineers.

Q. State whether or not, it was necessary to know the mean Gulf level, as established by the United States Army Engineers, in order to determine the mean high water elevation of Ferry Lake, in 1812 and 1839?

A. There was no necessity of making reference to the level of the Gulf of Mexico, in order to determine the mean high water of Ferry lake, in this Township, in fact the mean high water elevation was determined, as explained by evidence on the ground, without any reference, in the beginning to the bench mark of the Army Engineers, and the only reason for connecting the bench mark of the Army Engineers, was to give the datum with respect to mean Gulf level, which is the standard datum used in this part of the United States, by all Engineers, and it was one of the requirements of the special instructions under which the Surveying party operated, the special instructions of September 27th, 1913, that we should have, before making these relative determinations but it

had no connection whatever upon the determination of the mean high water of Ferry Lake in 1812 and 1839, or at the paesent time.

Q. So the correctness of the line, which you have surveyed, as representing the true high water elevation of Ferry lake in 1812 and 1839, is not dependent, in anyway, as I understand it, upon the bench mark established by the United States Army Engineers, and representing the mean Gulf level?

88

A. That is true.

Q. The contour, which you ran, and which is represented by the line showing the 173.09 foot elevation is correct, without reference to the bench mark or Gulf level?

A. It is.

Q. Mr. Kidder, you referred a while ago, in your testimony, to Red River, I will ask you to state how far Red River is from Ferry lake, and what connections if any, there is now or has been in the past, as far as you know, between the two bodies of water—

Counsel for Plaintiffs offers in Evidence General Drainage map of Ferry Lake and Red River, and neighboring Bayous connecting with other raft-formed lakes, together with certificate and legend of said map.

Filed in Evidence and marked Plaintiff 25.

Counsel for Plaintiff offered in Evidence certified copy of Topographic map of Red River at the mouth of Willow Chute, together with the map of the route of the Freeman-Curtis expedition of 1806 showing the Red river above the mouth of Willow Chute, together with the certificate and memoranda on said plat.

Filed in Evidence and marked Exhibit Plaintiff 26.

Q. Mr. Kidder, I will ask you to examine Plaintiff's Exhibit 25, the drainage map, and state what that map represents and who made it?

A. That map was made under my directions, based upon the field work of surveying parties of 1913-1914, showing the general drainage in the neighborhood, from Township Eighteen North to Township Twenty-one North, inclusive, and from Range thirteen West to Range Sixteen west, inclusive. The map is large and a compilation of the Official Township plats of the General Land office, showing the surveys and drainage in this neighborhood. Certain special details are brought out in distinct colors. The deep blue, represents the principal drainage channels of the region. The light shade of blue, rep-
89 resents the submerged area, during the period of the great raft in Red River. The red line in Township Twenty, North of Range sixteen west, represents the mean high water elevation of Ferry Lake during the raft period; the green line in said Township represents the present mean high water elevation of Ferry Lake, as controlled by the dam, at the foot of Ferry lake, in Section Twenty-one, of Township Twenty North, Range Fifteen west. This map also shows, that would be interesting to the Court in connection with previous testimony, specially marked circles, small squares, showing the position of the identified original corners, not only in Township Twenty North, Range Sixteen West but in the adjoining Townships, where connections were made to identify the original corners. It also shows the position of the mile corner on the boundary line between the States of Texas and Louisiana, particularly the position of the mile corner forty-six, established by the boundary commission in 1841, two years after the Warren survey, which according to the report and showing on the map of the Commission was established upon an Island

in Ferry lake called Neutral Island, which furnished additional evidence of the survey.

Q. Can you state what that evidence is?

A. On Neutral Island we found the original forty-sixth mile corner, as established by the Boundary Commission. The report and map of the boundary commission shows the monument established upon an island. That point is not an Island at the present time, owing to the recission of the waters of Ferry Lake. However we carried to this point the contour of 173.09, and marked it on the ground in the vicinity of the forty-sixth mile corner, which we found to circle around and enclose that location in such a way, that shows that if the water rose to 173.09 foot contour, that that point would be an island as reported in the field notes of the boundary commission. If the elevation were increased a short amount, in elevation it would submerge neutral island, it would be under the surface of the waters of Ferry lake. The recission of the waters of Ferry Lake from 173.09 foot contour to 167 foot contour was sufficient to make that ground a part of the main land, which it is now, today.

Q. Now when was that survey made, wherein it was referred to as an island?

A. June 1841.

90 Q. And the circle shown on here on the map was what corner?

A. The forty-sixth mile corner.

Q. And it is represented in the record of the 1841 survey as an island?

A. It is.

Q. At the present time it is not an island?

A. At the present time it is part of the main land.

Q. With the present mean high water elevation of Ferry Lake at 167?

A. It is.

Q. If that elevation were raised to 173.09, which you state represents the mean high water elevation as it existed in 1812 and 1839, would that be an island?

A. Yes, that point would be an island.

Q. Please state Mr. Kidder, and explain the map and the distance from Ferry Lake to Red River?

A. The map is drawn to scale the same as regular official Township plats, that is two inches to the mile, and this shows the distance from the foot of Ferry lake on the eastern boundary of Township Twenty North of Range Sixteen west, nine and one-quarter miles, practically east to Red river. It also shows the outlets of Ferry lake through Soda lake and Twelve miles bayou in a southeasterly direction into Red river in Township Eighteen North of Range fourteen West. The map also shows the drainage of the bayous leading in a southwesterly direction from various points along Red river to Twelve Mile bayou, which drain Ferry Lake and Soda Lake. Twelve mile bayou is located in the vicinity of the bluff in the Southwestern region; the region to the North East of Twelve mile bayou, is all bottom land of Red river. The map was prepared largely to show the drainage of the region and position in the neighborhood of the raft, Ferry Lake, Clear Lake, Soda Lake, Cross Bayou, Bodcaw. It was drawn largely to bring out the report more graphically the work of the Geologist engaged in this case, as he wanted to show the draining in the region where the natural silting process took place during the raft period and the conditions that would produce the lake in Township Twenty North of Range sixteen west. The Geologist will probably be able to testify more clearly to the Court, as to the reasons for the formation of the lake in Township Twenty North of Range Sixteen west, and the process which will ultimately lead to the restoration of the pre-raft condition in Township Twenty, North of Range Sixteen west, when that was a wooded belt. The

91

Surveying party made such examinations and such field work as was necessary, and made such compilations to show the work of the Geologist.

Q. Did you make an examination of Red river for the purpose of ascertaining whether any light could be thrown upon the mean high water level of Ferry lake?

A. There was such an examination made under the instructions of the Geologist. One of my assistants accompanied the Geologist to execute the necessary survey work, that is shown on Plaintiff's exhibit No. 26. The Exhibit shows the topography and contour line along Red river at the mouth of Willow Chute, which is directly opposite Soda Lake in Township Nineteen North, near the Range line between Ranges Thirteen and Fourteen West. The elevation shown by the contour lines on Exhibit 26, are referred to the same mean Gulf level, adopting the bench mark of the previous work of the Army Engineers, in such a way that the elevation here referred to the same datum, as in Township Twenty North of Range Sixteen west. The map shows the latitude of the locality at the mouth of Willow Chute, where it drains into Red River, that latitude was determined by observation by the field surveying party. Exhibit Plaintiff 23 by showing all of the connecting channels and bayous, in the neighborhood of the raft formation, shows graphically how the lake condition and water elevation in Township Twenty North, Range Sixteen, could be referred to the water elevation of Red River at the mouth of Willow Chute, showing where the report of the Freeman Custis expedition indicates a return to the Red river, after detouring around the great raft in Red river. That expedition was conducted in 1806, and was made the subject of exhaustive studies by the Geologist, not only historically, but with respect to the evidence on the ground, and map and descriptions furnished by the report of the expedition.

Q. Did you have before you at that time, a copy of the report of the Freeman Curtis expedition?

A. I did.

Q. Was that used by you and the Geologist?

A. It was used particularly by the Geologist
92 and the field work was conducted in order to map that condition, and was made under the directions of the Geologist.

Q. Mr. Kidder, I will ask you to state whether in addition to the ecological and geological data, there was any historical data, which supports the mean high water elevation of Ferry Lake, as established by your survey.

A. There was historical data, especially the record of the Freeman Curtis expedition in the year 1806, with collateral papers, letters from local people to the officials in Washington with regard to the condition of Red river, before the raft, a portion of which dated back, even before 1906 [1806], and the report of the Freeman-Curtis expedition is very complete and is cleared up by a map that shows the route of the expedition in making a detour around the raft. The expedition was compelled to follow through bayous and channels through the bottom lands each of the channel of Red river, and the expedition noted certain lakes standing with large number of forest trees in the bed of the lake that had been killed by water, and the expedition took latitudinal observations at various points along their route and indicated in that way the latitude of the point where the expedition returned to Red River; and the height of the banks at the point where the expedition returned to Red River; the depth of the water. The Geologist made a very careful study of such historical papers and went upon the ground for the purpose of identifying the exact location described in the returns and shown on the map, and the surveying party assisted the Geologist in mapping certain points and running such

levels and making such contour surveys as would facilitate the comparing of the elevation of Red river with the elevation of Ferry Lake in Township Twenty North, Range Sixteen west.

Q. Do you know whether the Geologist found any information in the report of the Freeman Curtis expedition, particularly with reference to the height of the bank of Red river, which verified or corroborated the high water elevation as established by you?

A. I do. I have carefully examined the report of the Geologist and also talked with him at length on the subject, and I understand from the report, and from
93 the consultations that there was convincing evidence of the banks where the Freeman Curtis expedition returned to Red River, showing the elevation of the banks above the actual level of the river.

Counsel for Plaintiff offered in evidence a certified copy of an account of the Red River, in Louisiana, from returns to the war Office by Messrs. Freeman and Curtis who explored the same in 1806.

Filed in Evidence and marked exhibit Plaintiff 27.

Counsel for defendants makes the same objection as heretofore, same ruling of Court and bill of exceptions reserved.

Q. Mr. Kidder, I will ask you to state whether or not, you established the mean high water elevation in Ferry Lake in 1913-1914 survey, before you made the resurvey of the Warren lines, or the survey made by Warren—in other words I want to know which was done first, whether the Warren lines were resurveyed first or the contour was first established?

A. I will state that the field work was carried along at the same time. It was of course necessary, adjust the

work of the surveying parties to the special work of the Ecologist and Geologist from day to day, and when necessary all of the surveyors were placed at the disposition of the special scientific workers, and the resurvey work was necessarily conducted on intermediate dates when the services of the surveying parties were not needed by the Ecologist or Geologist. In point of time the contour 173.09 feet was completed and marked out on the ground before the completion of the retracement and remarking of the Warren survey, in fact I think that the contour work was completed at least sixty days before the surveying party had entirely reproduced the Warren survey.

Q. In reproducing the Warren survey, I believe that you have stated that you found that Warren in numerous places terminated his section lines, and ran his meander line approximately along the same elevation, where you established the mean high water mark of Ferry Lake, as it existed in 1912 and 1839?

A. Yes, sir, I have testified to that effect.

94 Q. Now, Mr. Kidder, I will ask you to state whether or not, you made a survey in 1916-1917 of the up lands omitted by A. W. Warren, in his survey of 1839 and by Byron Bradley Bristol from his survey of 1871?

A. We did, in fact, execute such an extension survey in the winter of 1916-17, covering and including all of the up land, or major importance omitted from the A. W. Warren survey in 1839 and omitted from the Bristol survey of 1871. The area of the up land included in the extension survey is shown upon the supplemental plat approved March 28th, 1917, the total area of the survey being six hundred and seventeen and 20-100 acres, which plat is marked Plaintiff's Exhibit No. 9.

Q. Please refer to Plaintiff's Exhibit No. 9, being supplemental plat just referred to and state, in what sec-

tions you extended the Warren survey so as to include the omitted areas?

A. The extension of the Warren survey, so as to include the omitted areas by Warren, was made in Sections Three, Four, Nine, Ten, Twelve, Thirteen, Fifteen, Sixteen, Twenty-three, Twenty-four, Twenty-five, Twenty-seven, Thirty-two and Thirty-six.

Q. How much land did you find that Warren had omitted in Section Three?

A. Warren omitted 17.42 acres in section three.

Q. How is that land delineated on the plat?

A. It is delineated and described and shown as lot numbers being lots one two and three of section three.

Q. Comprising a area of what?

A. Seventeen and 43-100 acres.

Q. How much land did you find to have been omitted in section Four.

A. In section four, there was included in the extension survey Twenty-eight and 74-100 acres, representing the land omitted from both the Warren and Bristol surveys.

Q. What are the lot numbers of that land?

A. The lot numbers are Three, four and five, of Section Four.

Q. How much land is shown by your extension survey, to have been omitted by A. W. Warren and Byron Bradley Bristol, from their surveys in Section Nine?

95 A. In section nine, there is included in the extension survey sixty-six and 29-100 acres of land omitted from both the A. W. Warren and Byron Bradley Bristol surveys. This land is designated as Lots Numbers Five and Six of Section nine.

Q. Take section ten and state how much land is shown by your extension survey to have been omitted in the previous surveys of Warren and Bristol?

A. The plat shows one hundred and twenty-nine and 60-100 acres being designated as lots numbers six, seven, eight, nine and ten, in section ten, included in the extension survey and represents the land omitted by both Warren and Bristol in their surveys.

Q. Refer to Section twelve and state the area omitted from the A. W. Warren survey, and included in your extension survey?

A. This land is represented as lot one of Section twelve, and contains Twenty-one and 82-100 acres, which was omitted from the A. W. Warren survey.

Q. The next section, section thirteen, please make a similar statement in regard to the area omitted from the previous survey of Warren, and included in your survey?

A. In section thirteen, there is lot one comprising twenty-seven and 87-100 acres, which was omitted from the A. W. Warren survey.

Q. Mr. Kidder, please examine Supplemental plat, being Plaintiff's Exhibit No. 9, to which you have referred, taking up the entire Township, and state how much land has been omitted from the A. W. Warren survey, giving the area, lot numbers of the omitted lands?

A. Section fifteen, twenty-three and 84-100 acres, being lots one and two, omitted from both the Warren and Bristol surveys; section sixteen, twenty-eight and 33-100 acres, designated as lot one omitted from both the Warren and Bristol surveys; section twenty-three, seventeen and 74-100 acres, designated as lots one and two omitted from the A. W. Warren survey; section twenty-four, eleven and 49-100 acres omitted from the A. W. Warren survey; being designated as lot one of section twenty-four; section twenty-five, eight and 40-100 acres, shown as lot one, omitted from the Warren survey; section twenty-seven, seventy-nine and 90-100 acres, omitted from the A. W. Warren survey and designated as lots one, two and three;

Section thirty-two, forty-four and 21-100 acres shown as lot five omitted from the A. W. Warren survey;
96 section thirty-six thirteen and 80-100 acres designated as lots one and two and represents land in this section omitted from the A. W. Warren survey?

Q. What is the total area omitted from both the A. W. Warren and Byron Bradley Bristol surveys, included in your extension survey?

A. The total area is six hundred and seventeen and 21-100 acres.

Q. Mr. Kidder, how much time was spent by you in making the extension survey, represented on the Supplemental plat, which you have before you?

A. The extension survey began December 12th, 1916, and was concluded June 30, 1917.

Q. Was the work done on the ground in the field?

A. Yes, sir, the lines run out on the ground and the timber marked and monumented at the regular section corners, and quarter section corners, also at the angle points in the meander lines around the border of Ferry lake on the 173.09 foot contour. The subdivisional lines of certain sections were also run out and marked on the ground, monumenting the center line of the section and the quarter section with iron posts.

Q. Does the iron post bear any inscriptions?

A. Yes, sir, the iron posts are recorded and shown graphically in the field notes of the extension survey, being Plaintiff's Exhibit No. 17.

Q. State whether or not your extension survey was carefully executed?

A. The extension survey was executed with great care and in accordance with the printed and written instructions of the Commissioner of the General Land Office, using the regular equipment for surveys by surveyors of the General Land Office; the instruments were carefully adjusted and tested before beginning the work, and steel

tapes were compared with the standard steel tape and tested correct. Every detail of the field work was carried on with the greatest possible care, that we could exercise.

Q. Did you have a sufficient number of competent Assistants to properly perform the work?

A. We did. The names of those who assisted in the survey work will be found in Plaintiff's Exhibit No. 17, on what would be page 113. For assistants of whom there are seven, two chainmen, one flagman, two conermen, and two axmen, all of whom had had pre-
97 vious experience with surveying parties for the General Land Office.

Q. Are the field notes of your extension survey in evidence, and if so, what Exhibit Number?

A. The field notes are included in the book of field notes marked Plaintiff's Exhibit 17, which contains every detail of the preliminary adjustment of the instruments, and testing and step by step the process of running the lines and marking them on the ground. The field notes also show the connection on the ground from the monuments established to the various oil wells involved in this suit, and those connections involved in this suit will be found recorded in the field notes on pages seventy and seventy-one.

Q. How many oil wells are located on Lots eight, nine and ten of section ten, the property in controversy?

A. I am referring to Plaintiff's Exhibit No. 10, which graphically represents the land included in the extension survey, with reference to lots numbered eight, nine, and ten, of section ten. The sheet shows graphically the exact position of seven oil wells marked Jeems Bayou Hunting and Fishing Club, numbered five to eleven inclusive. The positions of the wells themselves being indicated by small black round marks.

Q. Those wells are located on the land in controvsrsy in this suit?

A. Yes, sir.

Q. Which land was omitted from the previous surveys of A. W. Warren and Byron Bradley Bristol?

A. This land, is part of the lands omitted by Bristol and Warren.

Q. And the lands, upon which the wells are located is shown on the supplemental plat of your survey, supplemental topographic plat of your survey?

A. Yes, sir.

Q. Marked Plaintiff No. 10?

A. Yes.

Q. Mr. Kidder, I will ask you to examine the Supplemental plat of Township Twenty, Range Sixteen, marked Plaintiff's Exhibit No. 9, and to state the character of the land included in your extension survey, with
98 respect to its elevation, forest growth and other characteristics?

A. The character of the land included in the extension survey, is really not known in Plaintiff's Exhibit 9, that exhibit shows the position of the land and the description by which re various subdivisions are now, and the area. The representation of the character of the land, the forest growth and elevation of the land is brought out clearly on Plaintiff's exhibit No. 10. With respect to the land involved in this suit, lots eight, nine and ten of section ten, the plat shows that the entire area is forestry. The forest is one of great age, made up of most varieties of hard wood trees, which are not found on land covered by a permanent body of water, or covered by water for even any extended period during the growing season of the year. The plat also shows the elevation of this land, ranging from mean high water elevation of Ferry Lake, 173.09 foot contour, by various contours ascending as high as 190 foot contour, an elevation of seven-

teen feet above mean Gulf level. The mean difference in elevation is northerly gradually from 179.09 foot contour to seventeen feet, and that compares the slope from the upper elevation to the lower elevation.

Q. Can you state that from your personal knowledge, have you been over the land?

A. I have been over the land a number of times and personally run out some of the contours in this section, and it was all done under my directions.

Q. You noted the growth on it, and can you testify as to what you have already stated from your personal knowledge?

A. Yes, sir, from my personal knowledge in that respect.

Q. State whether or not you examined the land in controversy in 1913-1914?

A. I did. I made my first general examination of this land in the fall of 1913, and from then so, until we concluded the field work in May, 1914, I was on this particular ground many times in connection with reproducing the Warren and Bristol surveys and remarking the lines. I visited the land with the Ecologist many times. I also visited the land with the Geologist, and I was with the surveying party in running out the contour lines which are represented on the map. This was all done
99 during the progress of the field work, and is not based upon any recollection or personal memory of the condition of the ground.

Q. Did you again visit the land in controversy in making your extension survey of 1916-1917?

A. I did. I was with the surveying parties in running out the extension of the section lines and the center line of the sections and quarter sections, and I was also with the surveying parties in making connections from the fixed monuments established in the process of the survey to the various oil wells.

Q. Your testimony then, relative to the land in suit is based upon your personal observation?

A. It is.

Q. Did you make a detailed study of lots eight, nine and ten of Section ten, going over the land carefully?

A. I did.

Q. Did you run some of the contour elevations yourself?

A. I did.

Q. Were the other contour elevations run under your direction and supervision?

A. They were.

Q. Please state how the land omitted by Warren and Bristol from their surveys, the property in controversy, compares with reference to timber growth, and elevation and in any other respects with the land included by them in their surveys in section ten?

A. A careful examination of lots eight, nine and ten of section ten, shows that there is no general difference at all between the timber growth found at the same elevation on either side of the Warren meander line; the general average of the land in lots eight, nine and ten of section ten, is as high, and somewhat higher than the general average of the land included in the fractional southwest quarter of section ten, as shown by the Warren plat. There is no shore markings or evidence occasioned by the waters of Ferry Lake along the meander line between the Warren Survey and the land included in the extension survey. After following along the meander line, as re-established in the Warren Survey, marking the western boundary of fraction southwest quar-
100 ter of section ten, I have been unable to detect any differenct in the character of the land on either side of this line. The general indications of the soil, and the timber growth is the same on either side of the line. There is no banks marking a body of water,

in fact there is no way on earth of determining where Warren ran the meander line along the west side of fractional southwest quarter of section ten, except by a surveying process running it out and measuring with the instrument, following the various courses of the meander line of Warren.

By Master:

Q. In other words, that so called meander line run through high land, with a trace of any shore or banks?

A. Yes, sir, exactly.

By Mr. Hunter:

Q. There is nothing on the ground along the Warren so called meander line, on the west side of fractional south west quarter of section ten, showing that the lake, or any other body of water was ever present along that line, is there?

A. No, sir, not the slightest evidence. The various angle points or turning points at the end of the various courses of the Warren meander line shown on the plat. Angle point number twelve is actually located practically on the 173.09 foot contour; from angle point number twelve to angle point number eleven there is an ascent from 173.09 foot contour to 175. foot contour; from angle point number eleven to angle point number ten, near the northern boundary of lot number eight, there is an ascent from one-seventy-five foot contour to a one hundred and ninety foot contour. I am referring to the Supplemental Topographical plat being Plaintiff's Exhibit No. 10. In running from angle point number twelve to angle point number thirteen the Warren meander line makes a gradual ascent from 173.09 foot elevation to an elevation of between 175 and 180 foot contour; running from angle point number thirteen to angle point number fourteen there is an ascent to above the one hundred and eighty

foot contour; going west from angle point number twelve
the 173.09 foot contour line is shown to make a
101 circle or curve, intersecting the meander line
established by Warren in two places, one between angle point number eleven and angle point number twelve and again between angle point number twelve and angle point number thirteen. Going west on the lines of lots eight and nine, the 180 foot contour is shown to traverse the two lots from the northeast to a southwesterly direction. The 185 foot contour is shown parallel to the 180 foot contour further west in the same lots. In the northern part of lot eight the 190 foot contour is shown to traverse from the Warren meander line westerly through lot eight, leaving the northern boundary of the lot about at its central point. This indicates a gradual slope from the western part of lots eight and nine to the east, and shows, as it were, generally that lower land was included in the Warren survey.

Q. State whether or not the land surveyed by you in lots eight, nine and ten of section ten, at the points you have indicated, does or does not slope towards the Warren meander line.

A. This land does in fact actually slope towards the Warren meander line, and the plat is intended to graphically indicate that slope.

By Master?

Q. The land is represented on the Warren map, as lake?

A. Yes, sir.

By Mr. Hunter:

Q. Did you find any evidence of a lake on the lots in suit, as surveyed by you?

A. We found in the southern part of lots nine and ten, a small embayment of Ferry Lake which crosses the line

between sections ten and fifteen, a very short distance into lot ten of section ten. At that one point only, did the actual margin of Ferry lake touch any part of the land in this suit.

Q. Is there any evidence or a lake or any other body of water in the land surveyed by you as lots eight, nine and ten of section ten, within the lines of your extension survey of those lots?

A. There is no evidence of any basin whatever, which could constitute a lake or even a pond within the area of lots eight, nine and ten of section ten. This ground all has a gradual slope sufficient to give perfect
102 drainage.

Q. Will you point out on the supplemental topographical plat marked Plaintiff 10, the points where the land included in your survey of lots eight, nine and ten of section ten, slopes towards the so-called Warren meander line, of fractional south west quarter of section ten?

A. The general slope through lots eight and nine, is to the southeast, and the lowest point is located practically at angle point number twelve of the Warren meander line. There is from that point a decided gradual ascent to the northwest, and the drainage from the western part of lot eight would be towards angle point twelve to the Warren meander line. The slope of lot nine of section ten, extends from the northwest to the southeast and the highest part of lot nine is in the northwestern portion of the lot at an elevation of 185 foot contour, the lowest point being at the southeast corner of lot nine, where the elevation is 173.09; lot number ten slopes both to the east and west, the highest part of lot ten is through the central part, where it averages somewhat above the 180 foot contour; the southwestern part of lot ten slopes from the Warren meander line in a southwesterly direction to the 173.09 foot contour; angle points numbers fourteen

and fifteen of the Warren meander line are both above the 180 foot contour, the east part of lot number ten, slopes to the east. Angle point sixteen of the Warren meander line is only slightly above the 173.09 foot contour; angle point fifteen af the Warren survey is somewhat above the 180 foot contour; this meander course from angle point sixteen to angle point fifteen does not follow the border of the lake, does not follow the contour, descending about seven feet in distance and about five chains.

Q. Mr. Kidder, what is the area of lots eight, nine and ten of section ten, involved in this suit?

A. The area of lots eight, nine and ten of section ten is eighty-five and 22-100 acres.

Q. State whether or not, that is all of the land which was omitted from the Warren and Bristol surveys in this section.

A. That is not the whole of the land omitted by Warren and Bristol in their surveys in section ten. There is lots six and seven of the same section embracing together forty-four and 39-100 acres of land.

Q. What then is the total area of the land
103 in section ten, which is omitted from the Warren and Bristol surveys?

A. The total area omitted from the Warren and Bristol surveys in section ten is one hundred and twenty-nine and 60-100 acres.

Q. State whether or not the land omitted in Section Ten, forms any part of a large area in Sections nine, ten, fifteen and sixteen omitted from the Warren and Bristol surveys?

A. It does. It is a part of a large parcel of land, extending into Sections nine, ten, fifteen and sixteen. The whole area in the four sections omitted both from the Warren and Bristol surveys is Two hundred and forty-eight and 87-100 acres of land.

Q. That area comprises parts of sections nine, ten, fifteen and sixteen?

A. It does.

Q. State whether or not the area so omitted, is one compact body of land, or one body of land?

A. It is all a part of one body of land, and connected and a part of the main land included in the Warren survey, and not separated from the land included in the Warren survey by any stream, lake or slough, or other natural evidences. It appears on the plat that the land in section ten is separated from lots six, eight, nine and ten, but that separation is arbitrary, only one created by the running of the Warren meander line, in other words you can cross from lot seven of section ten into the southwest fractional quarter of section ten as surveyed by Warren, and continue on to lot eight, of section ten, without noting any natural division, all a part of the same body of land.

Q. I believe that you stated that there is no slough, or water course dividing the land embraced in your extension survey from the land included in the Warren survey in section ten?

A. I so testified.

Q. What is the shape of the Warren survey in Section ten, with respect to fractional southwest quarter.

A. That shape represents a narrow peninsula of land, long tract north and south and narrow east and west, and with a very narrow connection apparently between the northeast part and the southwest parts of the fractional southwest quarter, at one point namely angle
104 point number six on the Warren meander line in section ten shown on Plaintiff's exhibit 8, the distance across the narrow peninsula of land to the opposite course of the Warren meander line, is about six chains, or four hundred feet. It would appear in that respect that there is a ridge connecting the peninsula

shown as the southwest fractional quarter of section ten with the main part of section ten in the northeast quarter of section ten, but as a matter of fact there is no such ridge.

Q. Is there any indication of there ever having been a ridge there?

A. There is not.

Q. State whether or not Warren's meander line along the peninsula of land to which you have referred, follows the contour or configuration of Ferry Lake or James Bayou, and if not, wherein does it depart from such contour or configuration.

A. The Warren meander line through section ten, does not follow any contour—does not agree with the mean high water elevation of Ferry Lake in 1812 or 1839, or at any other date. The elevation along this line ranges from a position that agrees exactly with the 173.09 foot contour, as it the eastern boundary of section ten to the low point crossing the arm of Ferry Lake, as shown between angle points seventeen and eighteen, in section ten, as shown on Plaintiff's exhibit No. 8, to the extreme high point, slightly above the 190 foot contour, with particular reference to angle point No. 10 of the Warren meander line, of section ten. This point being located in high wooded up land, far removed from the border of Ferry Lake. The courses in the meander line, when laid down on the ground in accordance with the record of the field notes of the Warren survey, traverses the area included in the boundary of section ten, apparently without regard to the border of Ferry Lake or James Bayou and without regard to any contour or shore marks, indicating a body of water, or any body of water and apparently without regard to the border of any stream or slough. No bank or other surface features being found, paralleling Warren's meander line on Section ten. The extreme elevation ranging from six feet below the 173.09 foot contour to

a point seventeen feet above the 173.09 foot contour, and the character of the land on either side of the Warren meander line, appears the same—There is apparently no difference in the soil and no difference in the timber, and the slope of the ground surface, instead of extending downwards, west from the west side of the fractional southwest quarter of section ten, as surveyed by Warren, as would be inferred from the plat of the Warren survey, that being represented as the bed of Ferry Lake, is found to be quite the reverse, as that portion of the land in section ten, is actually higher, a considerable amount higher than the land included in the Warren survey of the fractional southwest quarter of section ten.

105

Q. The land then, omitted from the survey of Warren, is higher than the land included in the survey in the southwest fractional quarter of section ten.

A. It averages higher, but there are points on the Warren meander line, which are just as high as any land in that vicinity, and there are several points on the Warren line that are below the high water level of Ferry Lake, and Warren actually includes, as part of his southwest fractional quarter, an area of about nine acres, which is really a part of the bed of Ferry lake.

Q. Please point out that low place on the map?

A. That low place is best seen on Plaintiff's Exhibit 8, where the dotted line, representing the 173.09 foot contour makes a circuitous route from the fractional southwest quarter, as surveyed by Warren. The figure '4' in the fractional southwest quarter of section ten, which represents the lot number of that subdivision being placed on the plat, being in this area which I have described, being part of the bed of Ferry Lake at the time of the Warren survey. That nine acres of lake bed is bounded by the dotted line, running from where you see the figure '18' across the fractional southwest quarter to angle

point 12, of the Warren survey, on the west side of fractional southwest quarter, then returning each across the fractional southwest quarter, to the vicinity of angle point No. 17. The same condition will be found by comparing the lines, will be found on Plaintiff's exhibit No. 13; on Exhibit No. 13, the Warren meander line along the east side of fractional southwest quarter of section ten, is shown to run down between the 170 and the 167 foot contour—crossing what is termed an emayement of Ferry Lake, which extends entirely across the fraction-
106 al Southwest quarter of section ten, as surveyed by Warren.

Q. Is that tract, composing about nine acres, represented upon the Warren plat as land?

A. Yes, sir.

Q. Whereas in fact it was water?

A. Yes, sir, water at the date of the Warren survey.

Q. Is it a very low place today?

A. It is not submerged at the present time, but it is low land, above the lake at the present level of the lake The area indicated as having been a part of the bed of Ferry Lake in the fractional southwestern quarter of section ten, is a little above the present level of the lake, and it extends up as high as previously stated to the former mean high water elevation of the lake, which shows the tract practically submerged at the time of the Warren survey.

Q. Represented upon his plat as land, whereas at that time it was water?

A. That is true.

Q. Mr. Kidder, what is the elevation of that low area surveyed by Warren, in the fractional southwest quarter of section ten, at the present time, above or below the 173.09 foot contour?

A. Below the 173.09 foot contour.

Q. What proportion does that nine acres bear to the total area omitted from the Warren survey, which you found to be land?

A. Warren included about nine acres in the fractional southwest quarter of section ten, which was part of the bed of Ferry Lake at the time, and there is a total of six hundred and seventeen and 21-100 acres in the Township omitted from both the Warren and the Bristol surveys. The nine acres is therefore 1.4 per cent of the whole.

Q. Do I understand that Warren, in his survey of section ten, included in his survey area of nine acres, which together with other areas he called land, and omitted from his survey an area of how much?

A. Six hundred and seventeen and 21-100 acres, which he denominated and showed on the plat as lake?

Q. Showed on his plat as lake?

A. With reference to all of the land in the Township omitted by both the Warren and Bristol surveys, as shown as a part of the bed of Ferry Lake; Warren also
107 omitted all of the land included in the Bristol survey of 1871, which he shows as part of the bed of Ferry lake; Warren also omitted all of the land included in lot four of section thirty-two and fractional southeast quarter of section thirty-one, surveyed by Boyd in 1854, that is shown as part of the bed of Ferry Lake on the Warren plat; the total amount omitted by Warren, is therefore eight hundred and ninety-seven and 33-100 acres, with the exception of the land included in the Boyd survey, the official plat of the Boyd survey not having been filed in this suit.

Q. What is the area of the land included in the Boyd survey?

A. That area is approximately seventy-five acres.

Q. Was that likewise omitted from the Warren survey?

A. It was.

Q. Well, with the addition of the land surveyed by Boyd, what was the total area omitted by Warren in the Township?

Objected to by counsel for defendants, as showing fraud, being res inter alios acta.

Objection sustained.

Q. Did you run over the Boyd lines?

A. Yes, sir.

Q. State whether or not, you had before you at the time that you made your surveys data relative to the survey made by Boyd in sections thirty-one and thirty-two?

A. We had with us in the field, the field notes of the Boy Survey, and the same are included in the book of field notes filed in evidence and marked Plaintiff's Exhibit No. 5, and will be found on pages 70 to 72 inclusive; we had with us also in the field the official plat of the Boyd survey, but that plat has not been filed in evidence in this case.

Q. The field notes of the Boyd survey, have been filed in evidence?

A. Yes, sir.

Q. You personally checked them?

A. Yes, sir, I personally checked them, and compared them with the original record on file in the Washington office?

Q. You found them to be correct?

A. I found them to be a true copy of the field
108 notes on file in Washington.

Q. State whether or not you retraced the lines of the survey made by Boyd?

A. The surveying party retraced all of the lines run by Boyd in this Township.

Q. Using Boyd's field notes?

A. Yes, sir.

Q. Which field notes have been introduced in evidence?

A. Yes, sir, and marked Plaintiff's exhibit No. 5.

Q. What was your purpose in retracing the Boyd line —was that done under your instructions?

A. It was. We were required to retrace and remark all of the lines previously run in Township Twenty North, Range Sixteen West, La. Meridian.

Q. Retraced all of the former surveys?

A. Retraced all of the former surveys, remarking them on the gound and considered in connected up every survey in the lands omitted from the previous surveys.

Q. Mr. Kidder, I will ask you to examine Plaintiff's exhibit No. 6, the Index plat of Township twenty, north of range sixteen west, showing the history of the original surveys and state whether or not that plat shows the Boyd survey?

A. This plat shows in brown colors fractional sections thirty-one and thirty-two, the lines run by Robert Boyd, Deputy United States Surveyor in 1854. Boy began his work at the Warren meander corner on the southern boundary of section thirty-two. Boyd completed the southern boundary of section thirty-two and extended the southern boundary of section thirty-one to the intersection of the border of Ferry Lake; Boyd also ran fractional line between Sections thirty-one and thirty-two, as far as the border of Ferry Lake; Boyd also ran the meander line along the border of Ferry Lake to the west through Section thirty-two and through the fractional southeast quarter of section thirty-one.

Q. I understand that a retracement of the Boyd work was a part of your duty in the resurvey of this Township?

A. It was, and the field notes of the retracements and the resurvey of the Boyd lines are found in Book "C"

Plaintiff's Exhibit No. 16, on pages 13, 66 to 69,
109 inclusive; also in Book "A" marked Plaintiff's exhibit No. 14, pages 12 to 16 inclusive.

Q. Did you make any corrections in the Boyd meander line?

A. We did not. We found Boyd's meander line to agree with the contour of the bluff at that place, the border of Ferry lake.

Q. You retraced the Boyd survey and show the distances and directions?

A. Yes, sir.

Q. And from that data can you not calculate the area?

A. Yes, sir, but it would consume quite a little time.

Q. You will figure that area for us?

A. Yes, sir.

Counsel for Defendant makes the same objection as heretofore.

Ruling reserved until the calculation is made.

Q. Mr. Kidder, waiving for the present the Boyd survey, please state the total area omitted by Warren in his survey, without counting the area of the Boyd survey?

A. The total area in this Township, of the up land omitted from the Warren survey, including the up land embraced in the Bristol survey, and the up land included in the extension survey of 1913-1914, and excluding the up land embraced in the Boyd survey of 1854 is eight hundred and ninety-seven and 33-100 acres.

Q. Were the lands surveyed by Bristol in 1871, omitted from the Warren survey?

A. They were.

Q. Mr. Kidder, returning to section ten, the property in controversy, I will ask you to state whether or not the

land in suit, were formed by the recission of the waters of Ferry Lake?

A. To the best of my knowledge, the land included in lots eight, nine and ten, of section ten, were never a part of the bed of Ferry Lake, and were not created in anyway by the recission of the waters of Ferry Lake, from its mean high water elevation in 1839.

Q. From your knowledge of the land, and experience in surveys, and from the work that you have done on that particular area, state whether or not, in your opinion the land in controversy, were lands in place at the
110 time that Warren made his survey?

A. I believe absolutely that the lands included in lots eight, nine and ten of section ten, were lands in place at the date of the Warren survey, and in every way similar to the general average of the up lands included in the Warren survey, bordering Ferry Lake in this Township.

Q. Now the lands in suit formed a part of a compact body of land consisting of lots six and six of section nine, eight, nine and ten of section ten; lot six of section ten, lot one of section sixteen, lots one and two of section fifteen, do they not?

A. They do.

Q. What have you to say with reference to whether or not, all of the lands I have just mentioned, were formed by the recission of the waters of Ferry Lake, after the Warren survey.

A. My opinion and judgment in the matter is that no part of the land described in your question were ever a part of the bed of the present Ferry Lake, and that these lands were not in any way created by the recission of the waters of Ferry Lake, after the date of the Warren survey.

Q. What have you to say, with reference to whether or not the lands I have just described, were lands in

place, at the time of the Warren survey, and existed then substantially as they do today?

A. I believe absolutely that the lands described in your question was in place at the date of the Warren survey, in practically their present condition, and covered by the same character of timber growth, and represents exactly the same topographical characteristics as the area does at the present time, with the same drainage features, the same soil, the same configuration in every way exactly as at the time of the Warren survey, with the single exception, that since the date of the Warren survey, I believe that the waters of Ferry Lake have receded from 173.09 foot contour to 167 foot contour. That extreme elevation is controlled by the dam at the foot of Ferry Lake.

Q. To what do you attribute the recission of the waters from 173.09 foot contour to the 167 foot contour?

A. I attribute the recission of the waters of Ferry Lake from the 173.09 foot contour to the 167 foot contour to the removal of the raft in Red River, which in a large measure restored the natural drainage features
111 of that region, except for such barriers which were created at the foot of Ferry Lake, during the period of the great raft, which held back and empounded the waters of Ferry Lake in this Township. The tendency of the present drainage is to cut away these barriers that were created during the raft period. That cutting is very evidence in Twelve Mile Bayou, and is going on very rapidly, that is below the dam at the foot of Ferry lake. The map, Plaintiff's Exhibit 25, shows Twelve Mile Bayou, which drains Ferry Lake and shows the position at the point marked "F" at the head of the rapids. The fall in Twelve Mile Bayou from the point 'F", travelling down the bayou a distance of a mile or a mile and a half, is something like sixteen feet, a series of rapids, that is cutting away the barrier which holds back the

waters of Ferry Lake. The elevation of the water at this point is considerably lower than at the dam. Were it not for the effect of the dam, the position of the waters at the present time would be about 164 foot contour, above mean Gulf level.

Q. Mr. Kidder, historically speaking, do you know when the raft in Red River was removed?

A. My recollection, is that the historical reports shows that the raft in Red River was removed about 1874 or 1875.

Q. Now referring to Warren's meander line through the fractional southwest quarter of section ten, I will ask you to examine the Warren plat or survey, and state whether or not that line is shown as fronting on James Bayou or fronting on Ferry Lake?

A. The plat of the Warren survey, marked Plaintiff's Exhibit 3, shows the Warren meander line in Section ten, through the south east fractional quarter of section ten, and the east part of the fractional southwest quarter of section ten, the plat represents the Warren meander line to border Ferry Lake, through the western part of the fractional southwest quarter, and through the fractional northwest quarter of section ten the plat represents the Warren meander line to border James Bayou, although the plat does not show the name 'James Bayou' the plat is marked 'Ferry Lake'. Warren's field notes also fail to make any reference to the border of the water known at the present time as James Bayou. The plat and field notes all indicate that it was a part of one body
112 of water, with the name of Ferry Lake.

Q. I will ask you to examine some of the other plats and state how far, approximately it is from the Warren western meander line to the actual mean high water mark of Ferry Lake?

A. Between angle points twelve and thirteen, in section ten and shown on plaintiff's exhibit No. 8, the short-

est distance from Warren's meander line to the mean high water elevation, on James Bayou is thirty-one and a half chains, and that is equal to Two thousand and seventy-nine feet.

Q. That distance represents the distance between the Warren meander line and the mean high water elevation?

A. That distance represents the shortest distance measured from Warren's meander line west of fractional southwest quarter of section ten, west directly to James Bayou.

Q. Mr. Kidder, what is a meander corner?

A. A meander corner, is a corner of a survey of a section line where the section line is terminated at the margin of a body of water.

Q. What is an angle point?

A. An angle point, is a turning point between two courses along a meander line through a fractional section.

Q. I wish you would take up the retracement of the Warren meander line in Section ten, on the twelfth, thirteenth and fourteenth meander courses and state whether or not Warren recites that he is following the mean high water marks along those courses?

A. Warren's field notes of the meander line of Ferry lake in Township twenty North of range sixteen west, as shown on Plaintiff's Exhibit No. 5, on pages 26, 27, 28, and 29, don't refer specifically to the border of Ferry lake. The field notes are headed 'traverse front of Sec. 1' 'Front of Sec. 24; and on down front of section 10. A further reference to Warren's field notes, take Section ten for example, page 21 of Exhibit 5, Warren's field notes reads 'S between 10 and 11, 49 chains to the lake set post' on page 22 of the same book of field notes 'West between Sections 3 and 10 the field notes read '56 chains To the lake set post.' In other places there is similar

references where Warren's sections lines intersects the border of the lake. On page 21 of the same Exhibit on
113 the line running south beween sections eleven and twelve, at a distance of sixty-two chains fifty links the field notes make specific reference 'To Ferry lake set traverse post.'

By Master:

Q. As I understand you, in verifying the Warren line, after you determined certain corners and courses and distances and you verified it, that it actually coincided with the 173.09 foot contour?

A. In some places the agreement was except, in other places, although not exact, approximately so, in the same position, both for horizontal position and elevation.

Q. From that he recognized the 173.09 foot contour as the correct contour?

A. No, sir.

Q. That is shown?

A. Yes, sir, and that is brought out most clearly on the resurvey plat marked Plaintiff's Exhibit No. 8.

By Mr. Hunter:

Q. I will ask you to state how far it is from those meander courses twelve, thirteen and fourteen, the meander line to the mean high water mark?

A. From the 12th, 13th and 14th meander courses, the distance to the west exceeds two thousand feet to the mean high water elevation of James Bayou. To the east at one point it is, at angle point 12, shown on Exhibit No. 8, the Warren meander line agrees, or is at the same elevation of the border of Ferry Lake, although he shows the lake in the opposite direction from what it is actually on the ground. He shows the lake to be west of the meander line at angle point No. 12, whereas at this place, the lake is to the east.

Q. Is that at the embayment of nine acres that you have referred to in your testimony?

A. It is.

Q. In that instance the meander line agrees with your mean high water elevation?

A. It does.

Q. But the position of the Lake as shown on the Warren plat, to be west of the meander line, whereas in reality there is land west of the meander line and water
114 east of the meander line?

A. Yes, sir, that is true.

Q. How many meander courses are there along the Warren, western meander line?

A. You mean from the quarter meander courses extending from the southern point of the fractional southwest quarter of section ten, northward to the northern boundary of fractional section ten, as surveyed by Warren?

Q. Yes? Taking the meander courses from the southern boundary of fractional southwest quarter, as surveyed by him, and extending up to the line established by Bristol as the Southern boundary of section ten, I will ask you to state the approximate distance if possible, of these meander courses, from the Warren meander line to the actual mean high water elevation of Ferry lake as established by you?

A. From angle point No. 14, the shortest distance is to the south west, two chains and one half.

Q. How many feet is that?

A. That is one hundred and sixty-five feet. From angle point 13, the shortest distance is to the south, three hundred and ninety-six feet; from angle point No. 12, the shortest distance to the west is twenty-one hundred and fifteen feet, to the east there is no distance at all, on that course, the margin of the embayement of Ferry Lake crosses the fractional south west quarter of section ten.

Q. That is the nine acres that you have referred to before?

A. It is. Angle point 11, the shortest distance to the west is twenty-eight hundred and forty-eight feet, from the same angle point 11 the distance to the southeast, to the border of the embayement of Ferry Lake is one hundred and fifty feet; from angle point 10, the shortest distance to the border of James Bayou, is in a southwesterly direction, and the distance is twenty-four hundred and fifty feet; from angle point No. 9, the shortest distance to the border of James Bayou, is in a southwesterly direction a distance of thirty-two hundred feet; from angle point No. 8, the shortest distance to the border of James Bayou, is also in a southwesterly direction a distance of twenty-nine hundred feet; from an-
115 gle point No. 7, the shortest distance to the border of James Bayou is Three thousand and forty feet; from angle point No. 6, the shortest distance to the border of James Bayou is Thirty-three hundred feet. I would like to call attention, at this place to the fact that the distance in a southeasterly direction to the border of Ferry Lake is about seven hundred and twenty-five feet, to the actual border of Ferry lake itself, that is mean high water elevation, but only three hundred and sixty feet to where Warren shows the border of Ferry Lake.

Q. That is a southeasterly direction?

A. Yes, sir, across the fractional southwest quarter.

Q. The other distance you spoke of is to the west and southwest?

A. Yes, sir, taking the shortest distance the best I can scale them from the map; from angle point number five, the shortest distance to the border of James Bayou is Thirty-four hundred and fifty feet; from angle point No. 4 the shortest distance to the border of James Bayou is Thirty-two hundred feet; from angle point No. 3 Warren's

meander line, the shortest distance to the border of James Bayou is thirty-five hundred feet in a southwesterly direction; from angle point No. 2, of the Warren meander line, at which point the connection is made by Bristol, in his meander line in fractional section ten, the distance to the actual border of James Bayou, in a southwesterly direction is thirty-nine hundred and fifty feet, the shortest distance in a northwestern direction across the land surveyed by Warren is thirteen hundred and ninety feet; from the same angle point, measuring southeast cross the land surveyed by Warren, the distance is nineteen hundred and twenty feet to the actual border of Ferry Lake, but only thirteen hundred and ninety feet to the Warren meander line; from angle point No. 1, section ten, as shown on Exhibit No. 8, which is the angle point of the Bristol meander line, the shortest distance to the border of James Bayou, is in a southwesterly direction two thousand three hundred and seventy feet.

Q. That is the point where Bristol's line joins the Warren meander line?

A. No, Bristol's meander line joins Warren's meander line at Angle point No. 2; at the Bristol meander corner, on the line between sections nine and ten, the
116 shortest distance to the border of James Bayou, is in a southwesterly direction sixteen hundred and fifty feet; from the same corner, on the section line between fractional sections nine and ten, the distance in a due southern direction along the section line between fractional sections nine, ten and fifteen and sixteen, the distance is exactly thirty-four hundred and thirty-seven and 3-10 feet to the actual mean high water elevation of Ferry Lake. I believe that that answer fully covers every angle point along the Warren and Bristol meander line through the fractional southwest part of section ten, as surveyed by Warren and Bristol.

Q. The land surveyed by Bristol in 1871, lies west of the Warren meander line, along section ten?

A. It does, and extends from section ten into section nine and from section nine into section four.

Q. What is the area of the land included in the Bristol survey, which was omitted by Warren?

A. The area of the land included in the Bristol survey in sections four, nine and ten was two hundred and eighty and 12-100 acres.

Q. Mr. Kidder, please examine the resurvey plat marked Plaintiff 8 and state whether or not, it is possible to average the distance of the Warren meander line in section ten to the mean high water elevation of James Bayou, and across the land omitted by Warren and surveyed by Bristol?

A. It is possible to merely give an approximate average of that distance, which is about twenty-five hundred and ten feet. I have determined that distance by drawing a pencil line on Plaintiff's Exhibit 8, one pencil line in the approximate mean position of the Warren meander line in the western part of the fractional southwest quarter of section ten, the second pencil line in the average position of the true mean high water elevation of Ferry Lake, then scaling the distance on the plat through the central part of the area between the two pencil lines, which gives approximately twenty-five hundred and ten feet.

Q. What is the distance at the longest point across the land surveyed by Bristol and omitted by Warren in his survey?

A. The maximum distance across the land surveyed by Bristol and omitted from the Warren sur-
117 vey, will be found in an east and west direction, approximately forty-two hundred and twenty-five feet.

Q. In giving the average distance, a few minutes ago, of twenty-five hundred and ten feet, were you at that time considering the land surveyed by Bristol, and omitted by Warren, or the land surveyed by you and omitted by Warren?

A. I was testifying with respect to the land included in the extension survey, land which had been omitted by the Bristol survey and omitted by the Warren survey.

Q. You were referring to your own survey?

A. Yes, sir.

Q. Now, Mr. Kidder, referring to lots eight, nine and ten, of section ten, please state the highest elevation on those lots, I am referring now to the lots in suit?

A. The highest elevation, at any point within the area, included in lots eight, nine and ten of section ten, would be found in the northern part of lot number eight, in fact at the northeast part of lot number eight, with an elevation that lies immediately above the 190 foot contour.

Q. That land was omitted from the Warren survey and included in your survey?

A. Yes, sir.

By Master:

Q. That is actually how many feet above the 173.09 foot contour?

A. Seventeen feet above the 173.09 foot contour.

By Mr. Hunter:

Q. I will ask you to refer to the peninsula of land surveyed by Warren, fractional southwest quarter of section ten, and state whether or not there is any point in that area that exceeds an elevation of seventeen feet above the mean high water mark?

A. I am referring to map marked Plaintiff No. 13; there is no point in the fractional southwest quarter of section ten, as surveyed by Warren, that exceeds seventeen

feet elevation above mean lake level? In the northern part of the fractional south west quarter of section ten, as surveyed by Warren, the elevation runs up to, but does not exceed the 190 foot contour.

Q. Mr. Kidder, do you know, or can you ascertain from the plat or any other data, the elevation of the larger portion of the fractional southwest quarter of section ten, as surveyed by Warren, the elevation, with reference to the contour 173.09?

118 A. I can answer that question in a general way by referring to Plaintiff's Exhibit No. 13, showing the fractional southwest quarter of section ten. This elevation ranges from 170 foot contour to the 190 foot contour; the general average would be somewhat less than seven feet above the mean elevation of the lake, because the map indicates a larger part below the 180 foot contour than there is above the 180 foot contour, and in that general sort of a statement I would say the average elevation of the land included in the fractional southwest quarter of section ten as surveyed by Warren, is approximately six or seven feet above the mean level of Ferry Lake.

Q. How does the average elevation of the land in fractional southwest quarter of section ten, as surveyed by Warren compare with the average elevation of lots eight, nine and ten of section ten, included in your extension survey?

A. The general average elevation in the Warren survey is several feet lower than the general average of the land included in the extension survey in the Southwest part of section ten. The greater portion of the land included in lots numbers eight, nine and ten is above the 180 foot contour, whereas, as previously testified the greater of the land included in the fractional southwest quarter of section ten, in the Warren survey, is somewhat below the 180 foot contour.

Q. So that the land omitted by Warren in his survey and included in your survey, I refer to the property in controversy, is higher in elevation on the average than the land that Warren surveyed in the fractional South west quarter, is it not?

A. I would so testify.

Q. Mr. Kidder, is there any reason known to you why Warren should have located his meander line through the fractional southwest quarter of section ten, in the position represented on his plat of survey?

A. I have been unable to conclude upon any reason, for the survey of the Wraren meander line in section ten, as represented on his plat approved August 31st, 1839, which has been filed and marked Plaintiff's exhibit No. 3.

Q. Are there any conditions on the ground itself, that justifies that meander line in any respect?

119 A. There is no evidence whatever on the ground, in the way of positive evidence, except at the point where the Eastern boundary of Section Ten intersects the border of Ferry Lake, and where the fractional Northern boundary of Section Ten intersects the border of James Bayou, but between those two points there is absolutely no positive evidence on the ground, that I have been able to see that would justify the winning of the Warren meander line in the position shown on his plat.

Q. I will ask you to state whether or not, Warren in establishing the Fractional East and Northern boundary of Section Ten recognized the true high water mark of Ferry Lake and James Bayou, in any way, and if so how?

A. My conclusion at the time of the resurvey was executed, was that Warren did recognize the true mean high water elevation of Ferry Lake, on the line between Sections Ten and Eleven, where that line interests the

border of Ferry Lake; that he also recognized the true mean high water elevation of James Bayou, where the Northern boundary of Section Ten, intersects an arm of James Bayou extending into the Northern part of Section Ten; the position of the Warren meander corners, both on the Eastern boundary of Section Ten and the Northern boundary of Section Ten, is substantially the same as the position of the 173.09 contour, from the shore markings of Ferry Lake along this contour, and it marks the belting of the cypress trees and the oak trees. The Northern boundary of Section Ten, at the intersection of this line with the arm of James Bayou, the shore markings, are not plain because at this point it is protected and there has been very little erosion of the soil, not enough to leave permanent marks, but the belting of the forest trees, the cypress below the 173.09 contour and the over cup above the 173.09 foot contour, is just as striking along the arm of James Bayou, as it is anywhere in the Township. Warren evidently recognized the same features, everywhere or he would scarcely have established the meander corner in just this position.

Q. You find that on the meander corners of the section line between Sections Ten and Eleven, that Warren recognized the mean high water mark, substantially as you found it to be in your survey?

A. He did, substantially the same as concluded by special investigation through the scientist in Ecology and Geology.

Q. Now I will ask you, Mr. Kidder, if War-
120 ren had ran his meander line around Section Ten, at the same elevation at which he fixed his meander corner, just mentioned, would he or not have included in his survey the property, the land involved in this suit?

A. He would have included all of the identical land involved in this suit.

Q. Referring now to Warren's meander corner on the Northern boundary of Section Ten—you state that Warren recognized the true high water elevation, as determined by you, please state whether or not Warren, or if Warren had run his meander line around Section Ten, at that same elevation, would he likewise have included the land in controversy?

A. In that event, the position of the Warren line, following out the contour, agreeing with the position of the Warren meander corner on the Northern boundary line of Section Ten, he would have included all of lots Eight, Nine and Ten of Section Ten?

Q. In case Warren had run his meander line at the elevation, which he thus recognized, would he have included the entire compact body of land, shown upon your plat of survey, representing lots Eight, Nine and Ten of Section Ten, I refer to your plat marked Exhibit No. 9, and lots Five and Six of Section Nine; Lot One of Section Sixteen and Lots One and Two of Section Fifteen?

A. He would.

Q. Would he likewise in that event have included Lot Six of Section Ten?

A. He would.

Q. Would he likewise have included in that event all of the land surveyed by Bristol in 1871?

A. He would.

Q. Now referring to the 173.09 foot contour, through the fractional Sections Nine and Ten, I will ask you whether the slope of the ground is such that Warren could have had any difficulty in running his line?

A. It would appear to the Surveyors, that there was practically the same general average slope to the land in Section Ten, as elsewhere around the border of Ferry Lake, and as Warren had apparently no difficulty in meandering the border of Ferry Lake, at its true

mean high water elevation, through some of the sections
for example Section Twenty-six, I would in-
121 fer there could have been no difficulty in fol-
lowing the same shore features through fractional Section Ten, in that way including all of the up land in Township Twenty North of Range Sixteen west, and omitting nothing to be embraced in subsequent surveys of this Township.

Q. Mr. Kidder, if the true mean high water elevation was 173.09 mean Gulf level in 1839, when A. W. Warren made his survey, it was at that same elevation all around the lake?

A. Yes, sir, it was exactly.

Q. It was not at one elevation at one point and another elevation at another point?

A. No, the mean high water elevation would be the level surface, with only such slope as would be brought about through the drainage of the head waters of Ferry Lake and James Bayou through this region, but that slope is so slight that it could not be detected especially with respect to the mean high water elevation. There is no difference in any part of the Township. In times of flood there is sufficient slope to the water surface in the Township so that the Surveyor would know the difference between the extreme East and West side and North and South, and particularly between the East and West, the water surface being from the west to the east, but that would be a very small quantity, and could only be measured during times of considerable flood.

Q. If Warren could correctly have followed the mean high water marks through one section and in certain points, as you have pointed to, could he not have easily have followed it around the Township?

A. Yes, sir.

Q. Could he not have as easily followed it along the true meander line of Ferry Lake, in Section Ten?

A. He could.

Q. Do you regard the Warren meander line of Section Ten, as a correct representation of the high water mark, as it existed at the time of his survey?

A. I do not.

Q. Do you regard his survey of Section Ten, as a correct survey of that Section, at that time?

A. I do not.

122 Q. Are the lands involved in this suit, up lands?

A. They are.

Q. Is, or is not the timber growth thereon, of a character that grows on up land?

A. The timber growth is characteristic of up lands of this region. The timber growth immediately above the 173.09 foot contour is of a character that are covered by water possibly a great part of each year throughout the flood periods, but above the 178 or 180 foot contour, the four species are distinctly up land in character and such species that would not stand overflow at all during the growing season of the year.

Q. Is any of the land swampy in character?

A. It is not.

Q. What have you to say with reference to the drainage of the land in suit?

A. The slope of the ground in lots eight, nine and ten of section ten, is sufficient to give very good drainage. There could be no standing water for any extended period in any part of this area.

Q. Now, Mr. Kidder, referring to the plat of the Bristol survey, as shown on Plaintiff's exhibit No. 4, I will ask you to state whether or not you made a thorough examination of the land surveyed by Bristol in this Township?

A. I did.

Q. Did you retrace Bristol's lines?

A. I did.

Q. Did you have before you at the time Bristol's plat and field notes?

A. I did.

Q. State whether or not you retraced Bristol's meander line along Ferry Lake and James Bayou?

A. The surveying parties retraced all of Bristol's meander lines in Sections Four, Nine and Ten, along James Bayou and Ferry Lake, and the wooden land in Sections Nine and Ten, where the Bristol meander line departed altogether from the front of James Bayou.

Q. For the information of the Court, I will ask you to state from your examination of the Bristol field notes and his plat, and from the actual situation on the ground, how Bristol proceeded in making his survey starting at the place where Bristol begins his survey and continuing around to his conclusion.

123 A. The method and order of proceeding in the Bristol survey is recorded in field notes, was this. Bristol began at the West meander corner on the Northern boundary of Section Ten and extended the section line West so as to complete the Northern boundary of Section Ten, and continued along the Northern boundary of Section None to the bluff, border of James Bayou; Bristol then proceeded to establish the line between Sections Nine and Ten, but before going on to that line he went back to the Warren section line between Sections Ten and Eleven and retraced that line, so as to obtain the direction of that line as indicated by the needle compass. Having made a retracement of the line between Section Ten and Eleven, Bristol proceeded to the corner of Sections Three, Four, Nine and Ten, which he had established, and then proceeded South parallel with the line between Sections Ten and Eleven, the line between Sections Nine and Ten, and he ter-

minated this line in a wooded flat a considerable distance removed from any part of James Bayou or Ferry Lake. Bristol then proceeded to run the meander line in Section Four. He began at a corner which he established, as the meander corner on the border of James Bayou, and Bristol instead of going entirely around the point, extending up James Bayou, crossed the ridge and continued the meander of the border proper through Section Four to his meander corner of Sections Four and Nine—Bristol then continues along the bluff fronting on James Bayou, and ran his meander line almost exactly parallel to the actual mean high water elevation of James Bayou, although Bristol's meander line was found to run along the top of the bluff, instead of at the base of the bluff, and continued along the bluff to what is marked Angle point No. 10 on Exhibit No. 8. At this point Bristol departs from James Bayou. From Angle point Ten to angle point 11 the meander line or course extends away from the bayou, and between angle points 11 and 12 the line traverses a wooded up land. From Angle point 12 to the meander corner of Sections nine and ten, the line traverses wooded up land, without regard to the border of James Bayou, Bristol then continued his meander courses of section ten, running the two meander courses, the turning point, Angle point one on Exhibit Plaintiff 8, Section Ten, from Angle point one to Angle point two of Section Ten, it is
124 through high wooded up land, and at angle point Two, the Bristol meander line connects with the Warren meander line. The plat of the Bristol survey, marked Plaintiff 4, represents this tract of land as peninsula, known as Wilson's point, bounded North by various arms of James Bayou, West by James Bayou proper and bounded South by what is termed in the plat "Open lake," which we would infer is Ferry Lake.

Trial of this case is not continued until April 24th, 1918.

April 24th, all parties being present trial of the above cause was resumed.

It is ordered by the Master that the witnesses herein summoned and are in attendance here are excused until Monday morning next, being H. E. Barnes and L. Z. Crawford, on behalf of the Government.

ARTHUR D. KIDDER, being on the stand, his examination was resumed:

By Mr. Hunter:

Counsel for Plaintiff offered in evidence certified copy of plat of Township Twenty North of Range Sixteen West, together with the legend, notations and memorandas thereon.

Same objection and ruling as heretofore.

Filed in evidence and marked exhibit No. 29.

Q. Mr. Kidder, in connection with the Boyd Plat just offered in evidence, I will ask you to state now, what was the total area of land A. W. Warren omitted from his survey in 1839, in this Township, including the land embraced in the Boyd survey?

A. The total area of the land omitted from the Warren survey of Township Twenty, North of Range Sixteen West, and included later in the Boyd and Bristol surveys and in the extension survey of 1916-1917, is Nine hundred and eighty-seven and 87-100 acres.

Q. Did you retrace the line, particularly the
125 meander line of the Boyd Survey in Section Thirty-one?

A. The surveying party did, under my directions and I was personally on all of these lines.

Q. What did you find, with reference to whether or not Boy, in his survey of 1854, recognized the same mean high water elevation that you found to have existed in 1812 and 1839?

A. I am answering your question, having before me Plaintiff's Exhibit 8, which shows the line surveyed by Boyd, as re-established in 1913-1914; it also shows the position of the high water level of Ferry Lake as determined in the process of the examination. I have gone over the ground, and I have to say in answer to your question that Boyd made a very correct meander of the border of Ferry Lake, though he followed the top of the bluff around the border of Ferry lake, at this point, rather than the foot of the bluff with the water level. The Boyd meander line is substantially parallel with the true contour of the border of Ferry Lake in Sections Thirty-one and Thirty-two, but the Boyd meander line is at a higher elevation, though the horizontal distance between the Boyd meander line and the contour represents the true high water level of the lake.

Q. Was the land surveyed by Boyd, omitted from the Warren survey?

A. It was.

Q. What is the area of the land surveyed by Boyd?

A. The area of the land surveyed by Boyd, as shown in his plat, which is the official plat approved March 31st, 1854, is ninety and 44-100 acres.

Q. Mr. Kidder referring to the Bristol line, South line surveyed by Bristol in 1871, I will ask you to state whether or not that line is a true and correct meander

line of the border of Ferry Lake, or James Bayou, in any respect?

A. In answering your question, I am considering that the meander line to which you refer, runs from Angle point No. 10 to Angle point No. 11, thence to Angle point No. 12, thence to the meander corner of Sections Nine and Ten, thence to Angle point one, then to angle point Two as shown on Exhibit No. 8.

Q. That exhibit is your resurvey plat?

A. Yes, sir, approved July 24th, 1816; that portion of the Bristol meander line would be considered
126 the Southern boundary of the tract surveyed by Bristol. That irregular line does not conform in any way to the mean high water elevation of James Bayou or Ferry Lake. It is not a contour line and is not parallel with the contour line, which represents the border of James Bayou or Ferry Lake. The line in fact is an irregular line through wooded up land, at a considerable elevation above the mean high water elevation from the border of Ferry Lake and does not agree with any bank, or other surface marks indicating the action of the water, and the forest growth to the right and to the left of the line, as you follow along the Bristol meander line is identical. The slope of the ground from Angle point No. 10 to Angle point No. 12, in Section One, is to the South, but the slope of the ground from Angle point No. Twelve in Section Nine to Angle point Number One in Section Ten, is to the Northwest. The last course of the Bristol meander line from Angle point one to angle point No. 2, where Bristol meander line connects with the Warren meander line, is over a high wooded up land, and at the point where Bristol connects with the Warren meander line, there is no evidence on the ground of there ever having been any body of water of any kind.

Q. At what point on the plat does Bristol turn away from the lake?

A. Bristol turns away from James Bayou at Angle point Number Ten of Section Nine, as shown on the resurvey plat approved July 24th, 1916, being marked Plaintiff's exhibit No. 8.

Q. Is that meander line run with regard to the contour of the lake, or without regard to the lake?

A. The meander line from that point to the East and Northeast is run without regard to the contour of the lake.

Q. Does it parallel the contour of the lake?

A. It does not.

Q. What have you to say with reference to the topographical conditions and the timber growth on both sides of that meander line with respect to whether there is any difference?

A. I am referring to Plaintiff's Exhibit 13, in answering your question. With respect to the topography of the land in this vicinity, I have to say, the very highest point in the neighborhood is the Wilson point, which is located in Lot Number One of Section Nine,
127 as surveyed by Bristol. At this point the ground level is about Twenty-seven feet above the level of James Bayou at mean high water elevation. The Bristol meander line, beginning at the meander corner between Sections four and nine, on James Bayou in the Southeast quarter of Section Nine to Angle point Ten, of Section Nine follows the top of the bluff of James Bayou.

Q. You are now testifying, are you not to the west meander line?

A. I am and approaching the other at Angle point Ten, Section Nine, Bristol's meander line turns directly away from the bluff point of James Bayou, and from Angle Point Ten to Angle point Twelve, considering the

topography of the land, the slope is to the South, there being high ground to the North, but the general characteristics of the land are the same, the only topographic features that can be noted is the slope, which is gradual to the South. Turning Northeast from Angle point Number Twelve, following Bristol's meander line, the meander line follows the high elevation. The slope through that particular meander course, running from Angle point Twelve to the meander corner between Sections Nine and Ten, is both to the Northwest and Southeast. That is the only topographic characteristics that are noticed. The character of the soil etc is practically the same.

Q. The slope is in what direction?

A. Both, from the Northwest and Southeast. The Bristol meander line in Section Ten, counting from the meander corner of Fractional Sections Nine and Ten to Angle point Number One of Section Ten, ascends to high ground, the slope being to the Northwest, the higher ground to the Southeast. That is the only noticeable topographic characteristics or features. The general appearance of the ground is the same on either side.

Q. Is the slope, at the point that you have just mentioned, towards the land omitted from the Survey, or towards the land he included?

A. The downward slope is towards the land omitted from his survey. The general characteristics of the forest growth on either side of the line is absolutely distinct all the way along, the same from Angle point Ten on the front of James Bayou to angle point Number Two of Sections Ten, where Bristol connects with the Warren meander line.

Q. What is the character of that forest growth?

128 A. The general character of the forest growth, is one of a mixed variety of hard wood, species that are found in Northwest Louisiana,

some black jack oak, which is found only on very high land. There is a great deal of Post Oak, and on the lower elevation, overcup oak and there is not a particle of cypress timber to be found at any point along the Bristol meander line from Angle point Ten, Section Nine, to Angle point Two, of Section Ten.

Q. No willows?

A. No, sir.

Q. How does that growth compare with the growth on the land included by Warren in Section Ten?

A. The timber growth compares with that of the high land included in the Warren Survey.

Q. You are speaking of the point where Bristol left the shore line and went East into the high land, the forest being that part of the high bluff?

A. Well that character continues, if he had proceeded down on the true contour of James Bayou, on that same bluff, forms a continuation. From that point South the Bluff is not so pronounced.

Q. The point South of there was retraced by you and you have described that heretofore, and as you say is the true contour line of James Bayou?

A. Yes, sir.

Q. Speaking of the Bluff where Bistol turned, what angle point is that, where Bristol turned away from the lake?

A. Angle point Ten, of Section Nine, as shown on the Plaintiff's exhibit 8.

Q. Mr. Kidder, I will ask you to state whether or not, at my request you have written on your resurvey plat marked Plaintiff 8 the letters "A," "B" and "C," on the Bristol meander line through Sections Nine and Ten?

A. I have. The letter "A" is placed opposite angle point No. 10 of Section Nine, as originally located by Bristol and re-established in 1913-1914. The letter "E"

is placed at the meander corner of Fractional Sections Nine and Ten, as originally located by Bristol in 1871, and re-established in the 1913-1914 survey; the letter "C" is placed at angle point Number Two, of Section Ten, at the point where the Bristol meander line connects with the Warren meander line in Section
129 Ten. This point was determined originally by Warren, and was then later connected with the Bristol, and was re-established in 1913-1914, and permanently monumented.

Q. The point "A" is placed where Bristol turned away from the lake and ran his line in an Easterly direction?

A. It is.

Q. You mentioned a while ago the bluff, which is characteristic of the Shore of James Bayou, along the West side of Section Nine, state what are the characteristics to the shore from point "A" to the Southern portion of Section Ten?

A. The border of James Bayou, to the South of Point "A" is a gradual slope, amounting to about twelve feet in a distance of about three hundred feet, this slope being towards James Bayou—this is true for a distance of about half a line, running South from Angle point No. 16, marked "A" on the map; from here South the slope is more gradual, amounting to seven feet in a distance of one hundred and fifty feet above the elevation of 180 foot contour, through the Southwest point of land omitted by both Warren and Bristol which is in Section Sixteen, as now established. The ground is practically level for some distance back from the shore of James Bayou. The general average of the slope of the ground, fronting on James Bayou, South from point "A" is about the same as the entire border of Ferry Lake in Township Twenty North, Range Sixteen West. It is a fair average of the slope to be found around the entire border of Ferry Lake, the shore in this section is pro-

tected from the action of the water at the time of storms.

Q. Is there any reason why Bristol could not have continued his meander line around Section Nine, after leaving point "A" instead of cutting across the hills, running East?

A. There is no justifiable reason that I have been able to see judging by the topography of the ground, why Bristol should have turned away from the actual border of James Bayou. He could have followed the border of James Bayou, with the same ease, and without any doubt as to the division line between James Bayou and the up lands back. There is no marsh, or slough of any consequence, no such pronounced gradual slope or plateau at the bottom to offer any doubt in determining the true place to run the meander line.

Q. If Bristol had continued, in the same general direction, in running his meander line around
130 Section Ten, that he followed in Section Nine, would he or not have included the land involved in this suit—continued in a Southern direction, the same general direction that he followed along the western boundary of Section Nine, running South, following the border of the lake, would he have included this land?

A. Had Bristollo—Bristol would have included the land involved in this suit, if he had followed the true border of James Bayou and Ferry Lake at the mean high water elevation. The Bristol meander line, as run by him, along the front of James Bayou, in Section Nine, is at the top of the high bluff, and not in what would be called the true position for the meander line, and would lead him into a serious error if he had continued at the same elevation, but the quantity of land omitted along the front on James Bayou, as far as the Bristol meander line, running parallel with the border of the lake, is negligible. At Angle point Ten, point "A," it

would have been necessary for Bristol to pay attention to the shore features, marking the border of the Bayou, the body of water that he was meandering, and if he had paid particular attention to the shore markings or the timber growth, he would have had no difficulty in following the true border of James Bayou and Ferry Lake, and in that way would have included the identical land involved in this suit, and instead of following the Warren meander line at Angle point No. 2, of Section Ten, as shown on Plaintiff's exhibit No. 8, and which is point marked "C" the Bristol meander line would have connected with the Warren meander line, at the point marked angle point number sixteen of the Warren meander line in Section Ten, which is shown on the same plat; Bristol would have been justified in connecting with angle point number sixteen of the Warren survey in Section Ten, but he had no justification whatever for connection with the point Marked "C." If he had connected with the angle point marked No. 16 in Section Ten, he would have included all of the land involved in this suit and all of the land in Sections Nine, Ten, Fifteen and Sixteen, included in the extension survey.

By Master:

Q. You have explained that Bristol in his survey, when he left the point marked "A," that he left the shore of the lake and proceeded to run the pre-
131 tended meander line through the woods and high land, and connected with the Warren Angle point as described by you, leaving out therefore, all of this land South of that pretended meander line, which you have retraced yourself in the 1916-1917 survey—now starting from that point "A" going South considering your tracing here on the map, I understand your tracing here on the map, I understand that the

dotted line represents according to your view, the true meander line of James Bayou in 1839 and subsequent?

A. It was.

Q. Now in reproducing that you followed the line of the shore on the level of the 173.09 foot contour?

A. We did.

Q. And that represents your work as shown on this plat here and is the correct shore line according to your opinion of James Bayou?

A. That is just the case exactly.

Q. Now please explain—and you actually marked that out on the ground?

A. We did.

By Mr. Hunter:

Q. Now as you proceeded South and defined that line, describe the character of the land East of that land, and say whether or not it was of a bluff character, as to the Bristol line, of it he was lower, or can you describe it, does it slope from the water running up to the main body of the land. Tell in a general way the altitude of the land along that course there, from point "A" South?

A. The altitude of that land runs from seven to twelve feet above the level of James Bayou and the general average of the land is above the 180 foot contour, as will be shown to Plaintiff's exhibit No. 10. The 180 foot contour is shown to embrace the greater part of the area. The 185 foot contour which represents an elevation of twelve feet above the elevation of James Bayou, encloses an area probably equalling half of the whole, or one-third, perhaps of the whole area, which is less than seven feet above the level of James Bayou. That shows the land below the 180 foot contour. In my answer I have referred to the topographic map showing

132 the elevation, and my reference to Exhibit No. 13, the additional contour along the Bluff North from point "A," it will emphasize the greater altitude of the bluff.

Q. Mr. Kidder, I will ask you to examine the resurvey plat, with reference to the letter marked "B," your point "D" and state whether or not the lake is visible from that point, and if it is in what direction you would have to look to see the lake?

A. I wish to say that I have visited that point "B" many times which included many visits during the winter season, when there was no foliage on the trees, or undergrowth to obstruct the view and I have been unable, at any time to see the lake in any direction from the point "B."

Q. How far is it, in a Southerly direction from the point "B" going South to the mean high water mark of Ferry Lake?

A. The distance along the section line, running South from the point "B" to the mean high water level of Ferry Lake, is thirty-four hundred and thirty-seven and 3-100 feet.

Q. Referring again to the point "B" I will ask you to state whether or not the timber growth is the same on both sides of the line at that point?

A. The timber growth is substantially the same, in every direction from the point "B" as far as I can see. There is nothing on the ground to indicate any sort of change in the forest growth within a reasonable distance in any direction from the point "B."

Q. How does the ground slope from the Point "B"?

A. From the point "B" the ground slopes to the Northwest.

Q. This slope of the ground from the point "B" is towards the land surveyed by Bristol, instead of towards the land omitted?

A. It is.

Q. Please examine again your resurvey plat marked Plaintiff's Exhibit No. 10 and state whether or not the lake is visible from any point between the points marked "B" and "C"?

A. The lake is not visible from any point on the Bristol meander line between the points marked "B" and "C."

Q. What have you to say with reference to the timber growth on both sides of the meander lines?

A. The timber growth, is identical on both sides, North and South of that line.

Q. Does the line from point "B" to point
133 "C" run through up land?

A. It does.

Q. What is the elevation of that line?

A. That line ranges from twelve to seventeen feet above the level of James Bayou. The middle portion of the line is seventeen feet above the elevation of James Bayou and Ferry Lake?

By Master:

Q. You mean the elevation of 173.09?

A. Yes, sir.

Q. That is what you describe as the elevation of Ferry Lake and James Bayou?

A. 173.09. The meander line at this place, which is through the middle part of the distance between Angle point number one and angle point number two, is above the 190 foot contour, and angle point "2" which is marked point "C" on the Exhibit is within the area above the 190 foot contour.

Q. Is James Bayou visible from any point along the line between points "B" and "C"?

A. I will say also that it is impossible to see any part of James Bayou along the Bristol meander line from point "B" to point "C" in Section Ten.

Q. Mr. Kidder, what have you to say with reference to that portion of the Bristol line from point "A" to point "B" in regard to its correctness, is it correct in any sense, as a meander line?

A. It is not run in accordance with any rules known to the surveys in regard to running meander lines.

Q. Is it run in accordance with the topographical conditions of the land?

A. It is not.

Q. Is it run parallel with the contour of the lake?

A. It is not.

Q. Or James Bayou?

A. No.

Q. State whether or not it departs at right angles, or practically so from James Bayou?

A. The direction of the course East from point "A," which is on the bayou, is almost at right angles
134 with the actual front of James Bayou.

Q. Is there any timber growth along the line from "A" to "B" at the present time?

A. There is. The line from Angle point Ten to Eleven is through very scattering timber, part of that ground has been in cultivation. The meander line from Angle point Number Eleven to Twelve and then to "B" is entirely through the timber.

Q. How much land was omitted by Bristol from his survey to the South of that meander line.

A. The area of the body of land in Sections Nine, Ten, Fifteen and Sixteen, to the South of the Bristol meander line, from Point "A" to Point "C" is two hundred and thirty-five and 35-100 acres. In making that calculation I am excluding all of Lot Seven of Section

Ten, which is not directly South of the Bristol meander line, as stipulated in your question.

Q. Have you included in your figures the land in Sections Fifteen and Sixteen?

A. I have.

Q. Mr. Kidder, what is the general character of the land omitted by Bristol as to whether it is swampy, marshy or up land?

A. The general character of this area is up land. In fact it is all up land in character. There is no marsh, pond or basin of any character within this area. The slope, of the ground everywhere throughout this area is sufficient to give complete drainage. The land is entirely above the mean high water elevation of James Bayou and Ferry Lake, as determined in the process of examination which resulted in the location of the mean high water elevation at the 173.09 foot contour.

Q. You have already stated that the meander line run by Bristol from point "A" to point "C" is not a correct meander line, have you not?

A. I have.

Counsel for defendant makes the same objection as heretofore, same ruling and bill of exceptions.

Q. State whether or not Bristol erred in running the line from point "A" to point "C," if he intended
135 to represent that line as the meander line of James Bayou, or Ferry Lake?

A. My conclusion is that the Bristol meander line from point "A" to point "C" is erroneous, in every way throughout its entire length. It does not conform in any particular to the requirements of a meander line.

Q. State whether or not the error is manifest, with consideration of the topography of the land crossed by the Bristol meander line between points "A" and "C."

There is nothing along the Bristol meander line to indicate the border of a body of water, or the bank of any body of water or other shore marks or anything to indicate that his meander line approximated even in a remote degree the border of a body of water; the meander line as run by Bristol from Point "A" to Point "C" is not a contour. If angle point Number Ten, was on the border of Ferry Lake or James Bayou, that is point "A," then point "B" would be five feet in elevation above the level of the lake and point "C" in Section Ten would be seventeen feet above the level of the Lake. In other words, if the level of James Bayou agreed with the elevation at point "C" it would be approximately ten feet under water and the whole of the Bristol meander line from point "A" to point "B" would be submerged.

Q. As a Surveyor, then, would you or not say that Bristol committed a manifest error in running the meander line as he did and in omitting the land in controversy and the land included in your extension survey?

A. As a surveyor, I would say that his error was very manifest that there is no point of view to be made by a surveyor, which would justify the position of the Bristol meander line and there is no conclusion he could reach, through a surveying process or any rules known to surveying, that would warrant, or in any way justify Bristol's meander line from point "A" to point "C."

Q. Now, Mr. Kidder, you have been testifying relative to the Bristol meander line, I will ask you to refer to Warren's meander line in Section Ten, and state whether or not Warren erred in running his meander line as he did, and omitting the land in suit and the other
136 lands included in your extension survey?

Same objection, ruling and bill of exceptions.

A. Warren did make a very large error in Section Ten, in running his meander line as recorded in his field notes.

Q. State whether or not the error made by Warren, is or is not a manifest error?

A. His error is very manifest, from the view point of a Surveyor.

Q. State whether or not his survey, according to any rules of surveying or process known to surveys, the Warren meander line can be justified?

A. There is no justification whatever for the running of the Warren line as recorded in his field notes in Section Ten.

Q. I show you plat marked Plaintiff 18, attached to the transcript in the case of the Producers Oil Company vs. Lydia Hanson et al., and I will ask you to examine that map, with reference to the Bristol meander line about which you have been testifying, and state whether or not that plat in a general way conforms to your survey or the land omitted by Bristol?

A. This plat does conform in a general way very closely with the plat produced in the Extension survey. It shows the same general outline of the area omitted.

Q. State whether or not the plat that I have just showed you, shows that Bristol omitted more than was shown by your survey that he omitted?

Same objection, ruling and bill of exceptions?

A. There is described in the plat, I am reading from the Plat a total area of 303.33 acres. This is larger than the amount of land found by the United States Surveyors to have been omitted by Bristol.

Q. Do you know, from an examination of the plat, to what the difference is due?

A. The difference is made apparent by a comparison of the Plaintiff's Exhibit No. 18 with Plaintiff's Exhibit No. 13, and you will find in making that comparison that the water level as shown on Exhibit 18, the location would not conform with the present mean high
137 water elevation of 167 foot contour or in that immediate elevation, that would accordingly embrace a larger area than determined by the United States surveyors in placing the mean high water elevation at 175.09 foot contour, which would include less land.

Q. Mr. Kidder, referring to your preliminary survey made in 1913-1914, I will ask you to state whether or not the lands in controversy were included in any extension survey made at that time?

A. They were not. The survey of this area at that time was strictly topographical in character and not for the purpose of ascertaining any fixed boundaries of section lines or subdivision of sections.

Q. State whether or not the survey made in 1913-1914, which you have styled Topographic survey, wherein the mean high water elevation of the lake as it existed in 1812 and 1839, was established, had any reference to the land involved in this suit, or in any of the Ferry Lake cases?

A. The survey work, had no direct reference to my knowledge to any suits then pending or contemplated?

Q. Do you know the reason why the survey of 1913-1914 was made?

A. I do.

Q. Please state why it was made?

A. That examination and survey was ordered for the purpose of placing before the Department a report of the true conditions regarding the character and history of the whole region in Township Twenty North of Range Sixteen West, omitted from the Warren and all other

surveys in this Township, and to place before the Department the data upon which the Department could adjudge and determine the proper procedure with reference to certain mineral locations, applied for in the bed of Ferry Lake.

Q. Please explain the matter of mineral locations—did or not some persons make mineral locations or attempt to make them on Ferry Lake?

A. There were attempts made to make mineral locations within the bed of Ferry Lake and it was impossible for the Department to allow the mineral locations, because the official plat of the Warren survey showed, at least the greater part of the mineral locations which were being applied for was within the bed of Ferry Lake, as shown upon the official Township plat.

138 The mineral locators furnished a great many arguments and such proof as they could produce tending to show that Ferry Lake was not in existence in 1812, and the theory of the mineral locations were that the bed of the lake belonged to the United States Government, and was not a part of a body of water on the date that the State came into the Union. The State of Louisiana I understand through its Attorneys protested against such mineral location believing that Ferry Lake was actually in existence at the date that the State came into the Union in 1812, and therefore it belonged to the State of Louisiana in her right of sovereignty. I proceeded with the remarking of the Warren and other surveys for the purpose of identifying them and the general examination and co-operation of the Ecologist and Geologist was made for the purpose of determining specifically whether or not Ferry Lake was in existence in 1812. The papers of the Department showed specifically that the Department could not adjudicate the mineral locations without first determining whether or not Ferry Lake was in fact in existence in the year 1812.

Q. What then was the purpose of the survey of 1913-1914?

A. The purpose of the survey was to map all of the area outside of the land included in the previous surveys, and map them correctly with reference to the previous surveys and show the elevation of the land with respect to the lake and to determine the elevation at the bottom of Ferry Lake and determine the presence of the former existence of former stream channels through Ferry Lake, and to determine whether or not Ferry Lake was in existence in 1812, and to further determine the true elevation of the Lake in 1812, if it was found to have been actually in existence at that date, also its elevation at the date of the Warren survey.

Q. Did that survey have any connection with any pending or proposed suits?

A. It did not.

Q. Did it have any connection, or relation to or with the present Ferry Lake suits, including the case now on trial?

A. It did not, as far as I am aware, and I have seen practically all of the papers in connection with these cases.

139 Q. When you made the survey of 1913-1914, did you or not ascertain in connection with your survey, that certain land had been omitted from the previous surveys?

A. That development was the result of the work of 1913-1914 and was made part of the general report, regarding the conditions in Township Twenty, North of Range Sixteen West, of course at that time it was perhaps of minor consideration in the general report, but it was a part of the general report.

Q. In what way was it ascertained that certain lands had been omitted from the previous surveys?

A. That fact was developed by the positive identification of the original surveys, by remarking the line on the ground, in the exact position, and noting the large area of up land outside of the line previously run and established, and determining by historical matter and through the scientific study of the Ecologist and Geologist, the exact position of Ferry Lake at the time that Warren made his survey.

Q. Mr. Kidder, do you know who selected the tract of land to be included in your extension survey of 1916-1917? Did you select them, or were they selected and pointed out by the Department of the Interior?

A. The question as to what land should be embraced within the extension survey to be executed, and what areas were to be omitted or neglected as having no material error with respect to the Warren survey was developed by extended conferences of the Officials of the Interior Department in the Office of the Secretary and the offices of the Commissioner of the General Land Office, and also after conferences with the officials of the Department of Justice, who considered carefully the legal relations of the questions of manifest error in the parcels or bodies of land omitted from the Warren and other previous surveys in this Township and lying between the Warren and Bristol meander lines and the contour of 173.09 above mean Gulf Level. The work of the survey in the field was under specific instructions as to what area should be included in the extension survey.

Q. Were those instructions in writing?

A. Both in writing and tracings and graphic representation of the area to be included in the survey was furnished to the Surveyors.

140 Q. The written instructions were contained, were they not, in the letter from the Commis-

sioner of the General Land Office to you dated December 1st, 1916?

A. They were.

Q. Which letter has been filed in evidence, has it not?

A. It had.

Q. Mr. Kidder, did you ever testify as a witness in the trial of a law suit in the District Court of Caddo Parish, at Shreveport, Louisiana?

A. I did testify in a suit here.

Q. I will ask you to state whether or not you are the Arthur D. Kidder, to testified upon the trial of the case of H. M. Russell et al. vs. The Producers Oil Company et al.?

A. I am. I am answering with respect to the trial in the Spring of 1916.

Q. Known as the Russell case?

A. Yes, sir. I believe there have been several trials of that case.

On Cross Examination he said:

By Mr. Smith:

Q. Mr. Kidder, Ferry Lake and James Bayou, are navigable bodies of water and have been since 1812, and even prior to that time?

A. For some years prior to 1812.

Q. Ferry Lake was created and constituted by the action of the great raft, was it not?

A. It was.

Q. So that the conditions that would be found around the ordinary lake, natural lake, would be wanting in the case of Ferry Lake, that was brought about by the empounding of the waters by the great raft, was not that so?

A. Not altogether. The condition developed through the empounding of the waters in this Township, through the influence of the great raft would be similar to conditions around permanent lakes, though less marked in extent, with respect to the shore markings, be-
141 cause the life of the lake has been considerably less than the ordinary lake.

Q. What do you consider the life of that lake, when was it first created?

A. The lake came into existence between 1775 and 1780 and the levels were affected by the action of the great raft—I wish to qualify the statement by saying that the full influence of the great raft was not felt in the beginning, that it reached its maximum height gradually prior to the year 1812, and it remained stationary thereafter for a good many years, until after the year 1871.

Q. What was that maximum height?

A. The maximum mean high water was 173.09 feet above the mean Gulf level.

Q. Mr. Kidder, is there not more or less uncertainty about that data that you have testified to.

A. Not the slightest uncertainty, after going into it and studying it out as to the evidence leading up to the conclusion. I will say in the beginning that it looked like a very great problem to answer the questions involved, but with the help of the Geologist and Ecologist, and with the evidence brought to light through the work of Warren in his survey, it left no uncertainty in the minds of those engaged in the work, and I believe no uncertainty in the minds of the Officials of the Department of the Interior who adjudicated the cases pending before the Department.

Q. Well, Mr. Kidder, when the Ecologist and Geologist began their observations in this Township, was there

not very great uncertainty, making the beginning of their efforts, and didn't they have to discard certain evidence.

A. There was naturally a reservation of all conclusions until after making their study. The work was undertaken in a very systematic way, and no attempt was made to arrive at a conclusion until after exhaustive studies were gone into the field. The mystery was more with the Surveyors than the Ecologist and Geologist.

Q. I believe that you have stated that they put down certain stakes at certain places, and then afterwards they discarded a number of them?

A. That is correct. I will qualify that statement by saying that those stakes set, were found within
142 1-10th of a foot of the 173.09 foot contour, which represented the average of all, after having eliminated less than ten per cent of all the stakes set around the border of Ferry Lake for the purpose, in the beginning as a reference line.

Q. Mr. Kidder, the profession of Ecology is not a fixed science, almost in its infancy?

A. The subject was new to the Surveyors, except in a general way and we had to ask the Ecologist for a definition of the term, or what his science meant, but I understand that it was not new to those engaged in that work, that there is very little uncertainty in regard to results, that is reached through the science of Ecology, the law of nature is fixed, and that there is very little variation from the fixed law.

Q. I will ask you if there are not very few in the field of Ecology who are capable to practice that science.

A. I know of but very few.

Q. You heard Mr. Janes testify in the Russell case?

A. No, I was not present while Mr. Janes was testifying. I was with Mr. Janes before he testified, but I was not present in Court when he testified.

Q. You were with us in the field when there was a good deal of uncertainty as to the history gathered from certain trees?

A. There was a great deal of uncertainty among the laymen and Surveyors, but practically none with the Ecologist.

Q. Don't you recall that he was not positive in a good many instances, unless he could make a laboratory test, that he would have to take samples of the trees and study them out as to species and age?

A. The only work of the Ecologist, requiring laboratory study as I recall was with respect to roots taken from the trees. The identification of the trees themselves, their species and their age, could be made directly after taking a section of the tree with respect to age counts and foliage or other marks of the tree with regard to species.

Q. Mr. Kidder, you would not consider this scientific data was as correct or as valuable as testimony, as an eye witness if such could be produced, as to actual conditions existing in this Township and Range during 1812 and 1839?

A. I would consider the result very much
143 more reliable, because the trees are themselves living witnesses and record in their tree growth the conditions that existed throughout their entire life.

Q. Now I will ask you to recall the tree growth in Section Ten, the area that is in dispute and I will ask you if a great majority of the tree growths don't show the tree to be of an age subsequent to 1839, in other words ranged about ninety years growth?

A. That is true, and I want to qualify my answer by saying that the same would be true in nearly any forest. There is always a larger number of the younger trees. The Ecologist was compelled to get at his results of many years ago, through a study of the larger and older trees, that are to be found within the area.

Q. I will ask you if the old trees are the exception in this area, in the locality of this particular area.

A. They are in the minority with respect to percentage, but there are an abundant number, quite a number of large old trees.

Q. Now, if in 1839, when A. W. Warren made his survey, if the young trees were eliminated, you could see the lake very clearly, could you not, standing at the traverse line—you eliminate the trees under ninety years or a hundred years old, leaving only the old trees standing there today, you could see James Bayou on one side and Ferry Lake on the other, could you not?

A. No. I want to qualify that answer by saying that the forest conditions in 1812 and 1839, was the same as at the present time, that there was at that time, probably there was a large percentage of young trees and undergrowth the same as today; that the old trees of today, are those that were young trees at the date of 1812 and 1839, they are the survivors of the forest of that day.

Q. If you eliminate all trees today, under the age of one hundred years, only leaving present the trees over that age, would it not be possible to see James Bayou and Ferry Lake?

A. I think it would.

Q. I assume that in making your observations you found a great number of trees under one hundred years of age?

A. Yes.

Q. When did Warren make his survey, in February, 1839, the Spring of 1839?

144 A. The Warren survey was executed in the first quarter of the year 1839, that would include the months of January, February and March.

Q. Now I will ask you Mr. Kidder, if our high water in Red River is looked for generally during those months?

A. I understand it is.

Q. I will ask you, if it is not entirely probable that in the year 1839, there was high water in Red River, consequently high water in Ferry Lake, and this low area of the land in dispute, most likely covered with water when A. W. Warren made his survey?

A. My conclusion is that they were not—could not have been covered with water, except possibly for a brief period.

Q. Now I will ask you, from the historical data in the Department, is it not a fact that often the flood level is 180 foot?

A. I know of no historical data that would indicate a frequent elevation up to 180 foot contour. That has been determined in the examination more with respect to the markings around the border of Ferry Lake, and the character of the timber growth, between the 180 foot contour and the 173.09 foot contour.

Q. I will ask you, if you did not find abundant evidence of the water having often reached the 180 foot contour, during the raft period?

A. Do you refer to the historical data, or marks on the ground?

Q. Well both, those given from historical data and marks on the ground?

A. I want to say that from the report of the Freeman-Curtis expedition, that they noted the extreme high water mark as shown on the trunks of trees, where they detoured around to the East of the great raft, and there is abundant evidence on the ground to indicate the extreme high flood level of the refat period?

Q. That often went to 180 foot contour?

A. I could not say that it went to that elevation frequently, but it went there often enough to leave permanent marks from 178 to 180 contour, where the marks were found that give pronounced evidence of it.

Q. You have read the findings of Clay Tallman, Commissioner of the General Land Office, relative to the application of J. B. King, et al., dated July 9th,
145 1915?

A. I have read that.

Q. I believe that he says, "At the time the investigation was being made a dam was being constructed across the foot of Ferry Lake in Section Twenty-One, Township Twenty North, Range Fifteen West (its position is shown on sheet No. 8.) Mr. Kidder stated that prior to the influence resulting from the construction of said dam the extreme low water elevation of Ferry Lake was approximately 164 feet above mean gulf level; that said elevation was determined by the elevation of the natural clay barrier at the foot of Soda Lake, which is at the head of the rapids entering Twelve-mile Bayou; that the construction of the dam has caused the low water elevation to be raised to an elevation of from 166 to 168 foot above mean gulf level, and that during the period that the field work was performed the elevation varied between 166 feet and 174.42 feet, the maximum elevation reached on April 6, 1914; that during the maximum flood stages of the raft period the elevation reached 180 above mean gulf level." That was his report?

A. It was.

Q. Now, Mr. Kidder, Section Ten, with the water at an elevation of 180 feet, a large part of the area in disput would be submerged?

A. It would with respect to the Southeast part of Lot Number Nine of Section Ten.

Q. I will ask you if it would not have a slough all through there and leave an island?

A. It would not, as the slope of the ground is such that the margin of the water at an elevation of 180 would be a smooth curve extending from the Southwest side of Lot Nine, Northeast across to the central

part of the Northern boundary of Lot Number Nine and probably a part of Six would be below 180 and therefore submerged.

Q. I will ask you to look at the West side and see if you have not a slough marked on the map if the water was at 180 and I will ask you if that would not be under water, leaving a fringe of land between the submerged part and James Bayou?

A. That would be submerged up to 180 foot contour, but it would not be a slough, except in general appearance—would have timber throughout the fringe
146 or border between James Bayou and the 180 foot contour.

Q. With the water elevation at 180 foot contour, I will ask you if all of the land shown on this map, up to the 180 foot contour would not be under water?

A. No, sir, the land above the 180 foot contour would be above the flood level, with the flood level at 180 feet.

Q. That would really be a small area above the water—how much land would be left above the water with the flood level at 180 of the land in dispute?

A. It would leave approximately two-thirds above the flood level and approximately one-third below the flood level of 180 feet.

Q. Can you figure this acreage and give it to us approximately?

A. I can.

Q. Estimate it?

A. An approximation, based upon a scaling of the plat offered in evidence and marked Plaintiff 10, it shows that of the whole area embraced, eighty-seven and 2-10 acres in lots eight, nine and ten of Section Ten, thirty-three and 5-10 acres is located below the 180 foot contour and 53.7 acres above the 180 foot contour.

Q. Mr. Kidder, have you ever surveyed out the land patented to Stephen D. Pitts, so as to tell me the area

in the Pitts patent—you know the tract of land known as the Pitts land shown on your map in white, in Exhibit No. 10?

A. The land known as Fractional Southwest quarter of Section Ten?

Q. Have you ever surveyed that?

A. Established the boundaries of fractional Southwest quarter of Section Ten.

Q. What is the area of that fractional Southwest quarter.

A. The actual area, in the Fractional Southwest quarter of Section Ten, surveyed by Warren, is fifty and 88-100 acres. That area is arrived at in this way. The government plat of the Warren survey shows an area of fifty-five and 88-100 acres. That is the plat that has been filed in evidence and marked Plaintiff No. 3. It will be noted from an examination of the plat, that that area includes a fractional part of the Northwest quarter of Section Ten, being five acres, leaving fifty
147 and 88-100 acres in the Fractional Southwest quarter of Section Ten as surveyed by Warren.

Q. Warren however, shows on the plat fifty-five and 88-100 acres?

A. Yes, sir, the entire subdivision.

Q. I will ask you in the Southeast quarter, the fractional Southeast quarter is shown to be twenty-three acres?

A. It does.

Q. Mr. Kidder, in getting at the high water line, what would you say about the large deposits of drift wood, would that indicate the high water mark?

A. It would indicate extreme flood level?

Q. Mr. Kidder, I will ask you if Byron Bradley Bristol did not conclude his field notes of his survey with this statement "The slough or water course near

the original traverse in front of Section Ten, is now dry and can only be traced by the rotten drift wood"?

A. There is that statement in the field notes.

Q. You are not in a position to dispute that statement of fact?

A. I am.

Q. You are prepared to say there was no drift wood there, at that time in 1871, when Bristol's survey was made?

A. The question, I would assume, relates to the whole length of the Warren meander line in Section Ten, and in answering the question I will keep in mind the entire length of the Warren meander line in Section Ten, and will state positively that there could not have been any continuous line of drift along the Warren meander line throughout the entire length in section Ten. There was, no doubt, drift to be found at certain places along the meander line, but no continuous line of drift as would be inferred from Bristol's field notes.

By Mr. Storey:

Counsel for Defendants undertake to cross-examine this witness under protest and without waiving the objection heretofore made to that class of testimony, and to all subsequent testimony of like character.

Counsel for the Government objects to any reservation of the character attempted by Counsel, and submits that the cross-examination cannot be limited in this manner suggested, Counsel for Plaintiff calling attention to this fact in this connection after the cross-examination has proceeded to this point without any reservation whatever.

148

Q. Mr. Kidder, in reference to the statement made by Byron Bradley Bristol, in the concluding statement

of his field notes, he could only have referred to the meander courses that he run, as shown by his map?

A. I would not consider it that way, from the reading of his description.

Q. How would you consider it?

A. In his language he refers to the original traverse in front of section Ten, and the original traverse would be that of the Warren survey.

Q. How far do Warren and Bristol's traverse line differ in the West part of Section Ten?

A. They differ entirely, merely connect up at one point, the point marked "C" on Plaintiff's Exhibit No. 8.

Q. Mr. Kidder, the Bristol survey was checked by the land office and approved, was it not?

A. It was.

Q. The Warren survey was also checked and approved?

A. It was.

Q. The Williamson Jones survey was likewise checked and approved?

A. It was.

Q. I will ask you if the rule for running meander courses has always been the same?

A. It has always been the same.

Q. When Williamson Jones ran his survey in 1837, he concludes his field notes of Township Twenty-One, North of Range Sixteen west Louisiana Meridian, Louisiana, as follows: "Having previously examined the lake running through Township Twenty-One, Range Sixteen West, and finding it not navigable and none of the adjacent lands fit for cultivation, I considered it not of sufficient value to justify the expenses of a traverse." Now that finding was approved?

A. It was.

Q. Might it not very well have been that
149 Warren found this land unfit for cultivation and he disregarded it?

A. No. The effect of the conclusions reached by Williamson Jones was absolutely opposite to the conclusions reached by A. W. Warren. The effect of the Williamson Jones proceeding in Township Twenty-one North, Range Sixteen West, was to return every section as a full and complete section, so that the submerged area was returned as area, and the effect of the A. W. Warren proceedure was to exclude up land and term it part of the bed of Ferry Lake.

Q. Then, if a patent was given according to the Williamson Jones survey a man might get part water?

A. Exactly, the sections were shown and returned as full sections six hundred and forty acres, though partly occupied by James Bayou.

Q. Mr. Kidder, I believe that you stated in your testimony that some of A. W. Warren's meander courses took in low land, lake in fact?

A. I did so testify.

Q. So after all, it is a matter of general knowledge?

A. No, I am unable to take that view point, except as you might average the minor sinueosities of the border of a body of water slight changes in the course.

Q. Mr. Kidder, how long have you been with the Surveying Department of the Government?

A. Since July 24, 1900, nearly eighteen years.

Q. Are there not a number of small area shown in a number of places on your map of Township Twenty North of Range Sixteen West?

A. Yes, sir, I have a considerable number, in the extension survey.

Q. What are some of the smallest areas you are claiming here?

A. The smallest isolated parcel, will be found to include Lots One and Two of Section Three, eight and 38-100 acres.

Q. Mr. Kidder, is it not a fact that Surveyor Warren's work, as a rule was generally correct?

A. His work along the section lines was especially good.

Q. I will ask you if you could not in almost every instance follow a surveyor about and check them and find so-called omitted areas like you have shown in Township Twenty, North of Range Sixteen West?

A. No, this is an exception to the rule. There are comparatively few such instances, when you
150 consider the number of surveys in the General Land Office, in the aggregate of course there are a considerable number, but when considered as the percentage, the percentage is very small.

Q. I will ask you in the year 1839, when the survey was made, was not the wild lands of practically no value?

A. It was.

Q. I will ask you, when you made the survey in 1913-1914, and in 1916-1917, if these lands had not become immensely valuable on account of the mineral deposits?

A. It had.

Q. I will ask you, if you all did not use great care in running out your lines and tracing out the so called omitted area?

A. We did.

Q. I will ask you now, if the Department does not employ a staff of Surveyors to do the surveying work?

A. They do.

Q. And I will ask you if in 1839, the surveying was not done by contract?

A. That is true also.

Q. Was the Warren survey contract work?

A. It was.

Q. Was the Byron Bradley Bristol survey, contract work?

A. It was.

Q. Was the Williamson Jones survey contract work?

A. It was.

Q. I will ask you if the correctness of the survey did not depend upon the individual surveyor?

A. To a very great extent it did.

Q. Did not that vary very considerably?

A. That varied with the individuals, that is true.

Q. I will ask you if they did not try to put in as much time as they good—didn't they project imaginary lines?

A. Their rate of pay was per mile, and if any attempt was made to falsify the returns it would be in a way to increase the mileage.

Q. Mr. Kidder, the measurement of the traverse lines on navigable waterways, is simply for the purpose of determining the acreage is it not?

A. It is that and more. I want to say that
151 it is made also for the purpose of making a proper and correct representation of the fractional area.

Q. Of land to be sold by the Government?

A. Land to be sold by the Government.

Q. I will ask you when you find these discrepancies, if it is not more frequently found to check with variations of the water, the water sometimes being high and sometimes low?

A. No. I think as a rule, Surveyors had no difficulty in determining the approximate high water level. Their lines were run generally at approximately the correct mean high water elevation if they run the line at all, and in the opinion of surveyors today where we find lines

that do not agree with the mean high water elevation, or with something else that would indicate the margin of the water, the conclusion is that there was gross error in the actual running of the line, or in the record.

Q. Mr. Kidder, Mr. Warren did not pretend to run the mean Gulf level of 173.09 Biloxi datum?

A. No.

Q. So he did run on that level and it was a coincidence?

A. No, because he found Ferry Lake at that level.

Q. Well some of his corners would indicate that and others would indicate a difference state of facts?

A. Within a small margin.

Q. Mr. Kidder, the dam affects the situation at this time of Ferry Lake?

A. It holds Ferry Lake at its present level.

Q. Mr. Kidder, I will show you Plaintiff's Exhibit No. 4, and I will ask you, if Bristol, in his survey don't show overflowed land, beginning at the Warren corner of Section Ten, extending on down through Section Nine?

A. He does, the overflow on the Bristol plat extends to the Northern part of Lot One of Section Ten, into the Northeast quarter of the Northeast quarter of Section Nine, then South into the position where Lots One and Two of Section Nine come together.

Q. Now that plat was also regularly approved by the Land Department?

A. It was.

Q. Mr. Kidder, have you ever been on the
152 land in Sections Nine and Ten in rainy weather?

A. I have.

Q. Don't you know, as a fact that there are submerged ravines and if you attempted to cross with a horse that the horse would bog down?

A. There are places where there would be considerable water in wet weather, but no basin in the sense of a pond or small lake.

Q. Rather tricky character of soil in riding a horse over?

A. The soil is clay and very sticky when wet.

Q. I will ask you if this land is not wholly unfit for cultivation?

A. No. My opinion is that the land is all probably second rate agricultural land, and about the equal of most of the land in Township Twenty North of Range Sixteen West.

Q. I will ask you, if except small tracts around the Club house, if you have ever seen where any of it has been in cultivation?

A. No, that land is all timbered and has not been cleared.

Q. Mr. Kidder, the Club House referred to, is in Section Nine?

A. It is.

Q. I believe that it is shown in black in Lot Six?

A. It is.

Q. And section nine was made after the Warren survey?

A. It was.

Q. The extension of Section Nine, was by your survey?

A. Bristol established a part of Section Nine and we completed the work. With reference to Plaintiff's Exhibit No. 6, that portion of Section Nine shown in blue ink was surveyed by Bristol in 1871, and that portion of Section Nine shown in red was surveyed by the United States Surveyors in 1916-1917.

Q. Mr. Kidder, looking at your map, which has been filed and marked Plaintiff's Exhibit No. 13, right im-

mediately on the West side of Section Nine, marked in blue, is the channel of James Bayou?

A. Yes, sir.

Q. The channel sets in close to this new land, added to Section Ten?

A. Just a little off of the shore.

Q. Now in high water what effect would the
153 proximity have to that low land that you have added to Section Ten?

A. It would not have any more effect than if the channel were located on the west border.

Q. You do not think that the rushing of the water coming down through the channel would have a tendency to overflow that land more frequently than otherwise?

A. No, the waves follow the channel. Through the channel there are no trees or stumps, as it is clear while outside of the channel there are many stumps of corner forests that existed in that basin, before the lake came into existence.

Q. Now, referring to the same map, front of Section Ten, the slope is to the water gradually?

A. It is.

Q. After the raft period you say the recission was about seven feet?

A. About six feet from the mean high water elevation of the raft period to the present, from 173.09 foot contour to 167 foot contour.

My Mr. Storey:

Q. Mr. Kidder, you testified in your examination in chief, as to the amount of land omitted from the Warren survey, lying between his meander line and the lake in Sections, Three, Four, Nine, Ten, Twelve, Thirteen, Fifteen, Sixteen, Seventeen, Twenty-Four, Twenty-Five, Twenty-seven and Thirty-two, but you left out the

quantity of land in Sections Five, Eight, Eleven, Twenty-three, Twenty-six, Twenty-eight, Thirty-one, Thirty-three, Thirty-five and Thirtysix, now was that land? Why didn't you testify as to the amount of land in those sections?

A. The amount of land in those sections we found to be the same exactly with reference to the section boundaries as determined in the Warren survey—no changes on those sections.

By Mr. Smith:

Q. Mr. Kidder, in the Russell suit, I believe the area of Section three, according to your resurvey was different from that given by Warren was it not?

A. It was.

Q. I will ask you, if it is not a fact that in the Governmental subdivisions, that the acreage put
154 on the map, is not often times erroneous two or three acres, and sometimes even a little more than that?

A. Yes, that is not unusual due to the difference in measurements along the section boundaries.

Q. Would you not think that it would be a right hazardous undertaking to add the acreage given in the various sections in the Township, as being any check on the omitted land, that stands by itself?

A. Well in connection with the question, and answering and testifying with respect to the entire area included in the Bristol and Boyd Surveys and the extention survey in 1916-1917, and as we had retraced the Boyd work and the Bristol work and personally executed the extension survey, I feel safe in making that statement.

Q. Do you recall what discrepancy there was in Section Three in this Township, according to your Survey and the Warren survey?

A. My recollection is that the difference was about ten acres in Section Three and within the limit of the Warren survey itself.

On Re-Direct Examination he said:

By Mr. Hunter:

Q. Mr. Kidder, on cross examination you were asked with reference to flood stage of 180 feet contour, and it was suggested that possibly the lake was at that level, when the Warren survey was made in 1839? I will ask you to state, what the effect of 180 foot elevation would have been with regard to the land surveyed by Warren in the Southwest fractional quarter of Section Ten, had the lake been at such an elevation, at the time of his survey?

A. I will answer that question by referring to Plaintiff's Exhibit 13, which shows that the larger part of the fractional Southwest quarter of Section Ten, surveyed by Warren, is below the 180 foot contour—in other words would have been submerged if the lake occupied the elevation of 180 feet.

Q. What proportion of the fractional Southwest quarter of Section Ten, would have been submerged, if the lake, at the time of the Warren survey, had occupied the level of 180 feet, what proportion of that actu-

155 ally surveyed by Warren?

A. I would estimate about one-half.

Q. About half?

A. Yes, sir.

Q. What would you say with reference to the depth to which one half of the fractional Southwest quarter of Section Ten, as actually surveyed by Warren, would have been overflowed, if the lake had been at the 180 foot elevation?

A. The depth of overflow, would have ranged from zero to ten feet. The East portion of the peninsula, represented on the Warren plat, would have been, under such conditions, have been about ten feet under water.

Q. In such an event, what would you say with reference to the meander corners and meander line run by Warren, if the lake had been at such an elevation?

A. The meander corner on the Eastern boundary of Section Ten, would have been seven feet under water if the lake had occupied the 180 foot level; the meander corner on the Northern boundary of Section Ten, established by Warren, would have been about six feet under water, if the lake had occupied 180 foot level.

Q. How about the most of the other meander corners established by Warren, in the event the lake had been at such an elevation when he made his survey?

A. Most of the other meander corners would have been submerged to a depth of from five to seven feet, if the lake had occupied the 180 foot level, at the time Warren made his survey.

Q. State whether or not, it is a fact, that Warren ran a number of his section lines and meander lines at an elevation that agrees substantially with the 173.09 foot contour established by you.

A. That is a fact, through in certain sections.

Q. You have already testified in detail in that respect?

A. I believe that I have covered that point quite fully.

Q. Then Mr. Kidder, in view of those facts, do you think that there is any foundation for the theory that the lake was at 180 foot elevation when Warren made his survey?

A. I do not.

Q. At what elevation were most of the meander corners established by Warren fixed?

A. The average elevation was very close to
156 the 173.08 foot contour. A few of them though were slightly below and several slightly above the 173.09 foot contour. A number fell exactly on the 173.09 foot contour.

Q. What is your conclusion, with respect to the significance of the fact that Warren established the meander corners and the section line, on, or approximately on the 173.09 foot contour, with regard to the elevation of lake at that time?

A. The conclusions is that the lake actually occupied that elevation during the period that Warren made his survey.

Q. Mr. Kidder, your attention, in the cross examination was called to the statement in the field notes of Byron Bradley Bristol with respect to the original traverse, can you locate that place in the field notes, and explain your understanding of the reference?

A. That reference will be found on page 26 of the book of field notes of the original survey, Plaintiff's Exhibit No. 5. The record with reference to the traverse line follows the field notes of the regular section line and the inference is that the traverse line is the same or intended to be the same as what is now termed meander line and the survey was made for the purpose of completing fractional Section Three bordering on Ferry Lake and James Bayou.

Q. To what original traverse line did Bristol refer in that statement?

A. Bristol, in his statement on page 47, refers to the Warren traverse line in Section Ten.

Q. Will you please point out, on some plat, the traverse line referred to by Bristol, and identify the plat to which you refer?

A. I refer to Plaintiff's exhibit No. 8, which shows all of the resurvey of Township Twenty, North of Range

Sixteen West. The original traverse of Warren, to which Bristol referred, will be found in Section Ten, beginning at Angle Point 2, marked "C," then extending to Angle points three, four, five, six, seven, eight, nine, ten, &c, to angle point Number Twenty-three, thence to the meander corner of fractional sections Ten and Eleven. The reference in Bristol's field notes also relates to the dotted broken line extending from the point marked "C" to the northern boundary of that Township where Warren terminated his survey on the arm of James Bayou, at which point Bristol started
157 his survey.

Q. I will ask you to state whether or not Bristol survey, included in his survey, land lying West of the original traverse referred to in his field notes?

A. He did, lots one and two of Section Ten, lying immediately west of the Warren traverse line in Section Ten.

Q. So Bristol found land extending West of the traverse line to which he refers in his field notes?

A. He did.

Q. Is it not a fact there is more land than lots one and two of Section Ten, lying west of that traverse line?

A. The land in Section Nine, extends west of Lots One and Two of Section Ten.

Q. Your attention was called this morning to a statement in the Government field notes of the Williamson Jones Survey, with regard to Williamson Jones' statement, concerning land not surveyed by him. I wish you would turn to that portion of the field notes and explain what Williamson Jones did in that respect?

A. That reference will be found on page 32 of the book of field notes filed in Evidence and marked Plaintiff No. 5. The field notes of the Subdivisional of Township Twenty-One North of Range Sixteen west by Williamson Jones, show that Williamson Jones did not meander

the border of James Bayou in Township Twenty-One, North of Range Sixteen West. The field notes shows that certain lines cross James Bayou, which Williamson Jones did not actually run and mark on the ground, but the plat of the Williamson Jones survey show the projection of the section lines, and the completion of the boundaries of the sections, and the area of the various sections are shown in the field notes, that is regular sections having six hundred and forty acres, instead of fractional sections, with the up land described by fractional boundaries, he not making any division between the up land and the land submerged. They were all classed as land, which could be entered under the general land laws of the United States.

Q. What Township did Williamson Jones survey?

A. He subdivided Township Twenty-one, North of Range Sixteen West.

Q. He subdivided this Township Twenty, North of Range Sixteen West?

A. No. He ran the Northern boundary of Township Twenty North of Range Sixteen West.

158 Q. So the Williamson Jones survey did not affect the land involved in this suit, that is he did not survey this Township?

A. He surveyed the Southern Boundary of Township Twenty-One North Range Sixteen West, which is identical with the Northern boundary of Township Twenty North, Range Sixteen West. That line controlled the initial work of Warren, as Warren's work was initiated upon the Williamson Jones boundary.

Q. Williamson Jones, did not survey Township Twenty, North of Range Sixteen West?

A. No.

Q. It was suggested on cross examination that perhaps Warren in meandering the lake, followed the general average, giving and taking, sometimes including

land that should have been water and vise versa, is there any foundation for that theory in fact?

A. There is no foundation for that theory as a whole in regard to the meander lines of Ferry Lake—where the Warren line agrees at all with the border of Ferry Lake, as determined in the process of the examination, where there could be any comparison at all between the position of Warren's meander line and the contour, representing the mean high water elevation of the lake, as determined in the examination, and show any relation of one line to the other the relation is good. In other words, I mean to say, in certain sections, section twenty-six being a good example, the meander line was correctly run and does not extend out into the lake, above up on high land, above the lake border; in order to make a still further comparison, reference may be made to Section Twenty-eight. The meander corner on the Eastern boundary of Section Twenty-eight is on a high bluff, a foot above the contour, but not at any great distance horizontally from the contour of the lake. The meander line on the Southern boundary of Section Twenty-eight is located almost on the 173.09 foot contour. Between those two points the Warren meander line shows a difference in elevation exactly as between those two meander corners, and an examination of Plaintiff's Exhibit 13, it shows that the meander line follows the shore of the lake, and don't extend out into the lake at any place in Section Twenty-eight. That is a fair average of the base of the slope on the border of the lake.

159 Q. In Section Ten, the section in controversy, is there any foundation for the theory that Warren was attempting simply to average the land and water, in running the meander line?

A. No, not that I have been able to see.

Q. You were asked on cross examination about the land shown on the Bristol plat, as overflowed—I will ask you to examine the plat of the Bristol survey, marked Plaintiff No. 4, and state whether or not Bristol excluded the area that he shows as overflowed, or included it in his survey?

A. That area is included in the Bristol survey.

Q. Where is the club house of the Jeemes Bayou Fishing and Hunting Club located?

A. The club house is located in the South part of Lot Six of Section Nine, and is shown on the topographical plat of Township Twenty North of Range Sixteen West, Plaintiff's Exhibit No. 10.

Q. State whether or not the land on which the Club house is located upon one of the lots in controversy in this case?

A. It is.

Q. What is the elevation of the ground upon which the Club house is located?

A. The Club house is located on ground above the 185 foot contour at an elevation of less than 190 feet.

Q. Was the land on which the Club house is located, omitted from the Warren and Bristol surveys?

A. It was.

Q. Mr. Kidder, you were question in regard to the cultivated area in Section Ten, I will ask you to state whether or not, any of the land in suit is in cultivation?

A. There is cultivated land in Sections Nine and Sixteen.

Q. I will ask you to state how the elevation of the land in controversy, lots eight, nine and ten of Section Ten, compare with the elevation of the cultivated area referred to?

A. The elevation averages about the same.

Q. Is the land in suit susceptible of cultivation?
A. It is.

On Re-Cross Examination he said:

By Mr. Smith:

Q. Mr. Kidder, some of the meander corners
160 of Warren, if taken would agree with the 180 foot level, would they not?

A. The meander corner of fractional section twenty-seven and twenty-eight, is somewhat above the 180 foot contour.

Q. There is some land in that section omitted from the Warren survey?

A. Some land in section twenty-seven included in the extension survey.

Q. When you got to Mooringsport, what have you there as to the meander corner?

A. The meander corner on the western boundary of section twenty-five, where Mooringsport is located, is just exactly on the 173.09 foot contour. The meander corner on the south of section twenty-five falls on the railroad grade of the Kansas City Southern Railway, and it is of course impossible to determine the exact ground level at the time of the Warren survey, at it has been filled in but on the other side, or to the northeast and southeast, after getting away from the railroad grade, we come to the 173.09 foot contour on a curve, which would swing in and naturally connect very close to the position of the Warren meander corner.

Q. Now, Mr. Kidder, was it not very difficult to find the bank, from the topographical evidence.

A. In considering the topographical evidence, we should embrace not only the shore markings but the forest, it was not. To consider the shore markings at this time, after the recission of the water I would say it would be difficult to follow the border of the lake.

Q. Then you depended upon that entirely the Geologic and Ecologic survey?

A. More particularly on the ecologic, to get at where that elevation should be, and in running out that contour we run a level line.

Q. Now Williamson Jones spoke of the traverses in Township twenty-one, north range sixteen, and stated that the land was too worthless to run the line, and as we understand he made the full sections which embraced the water?

A. He did.

Q. Did your instructions ask you to delineate and show the land that the Government patented to par-
161 ties, that was under water?

A. No.

Q. Been no effort to show how much was water?

A. No, except that represented on Plaintiff's Exhibit No. 13, the Hydrographic and Topographic map.

Q. Now, section ten, the disputed area is pretty well cut up with low and high land, having 180 foot contour, some 190 and some 170 foot contour?

A. In the part surveyed by Warren?

Q. So that if Warren was there when the water was as an elevation of 180, would it not have presented quite a flood appearance?

A. Yes, and the configuration of section ten, would have been very different from the configuration at another time.

Q. From your knowledge as a surveyor, would you not think that he would have been justified in treating it very much as Williamson Jones treated it, as worthless, too worthless to traverse around in detail?

A. No; I would not. I do not believe there was any justification whatever for Warren to show an erroneous meander line in any section.

Q. In 1839, you might say that it was valueless?
A. Practically so.

On re-direct examination he said:

By Mr. Hunter:
Q. Whether valueless or not, it was up land, was it not?
A. The entire area in Township twenty north of Range sixteen west, above the 173.09 foot contour, was up land in character at the date of the Warren survey.
Q. Was not water?
A. Was not water, or covered with water for any considerable period any time during the year.

162 H. E. BARNES, a witness for the Plaintiff, being first duly sworn, testified as follows:

On Direct Examination, he said:

By Mr. Hunter:
Q. Where do you live, Mr. Barnes?
A. Shreveport, Louisiana.
Q. What is your profession?
A. Civil Engineer.
Q. How long have you been a civil engineer?
A. Twenty years.
Q. Did you ever hold any official position, as civil engineer?
A. With the City, I held the official position of City Engineer of the City of Shreveport.
Q. State whether or not you ever made a survey of land in section ten, township twenty, north of range sixteen west?

A. Yes, sir, I made a survey of the fractional southwest quarter of section ten, township twenty north, range sixteen west in the spring of 1910.

Q. Was that survey made under an order of Court?

A. It was.

Q. Do you know in what suit the survey was made?

A. I do not remember the exact title of the suit, but it was between the Levee Board and the Jeemes Bayou Hunting and Fishing Club?

Q. Did anyone accompany you in making that survey?

A. Yes, sir, Maj. L. Z. Crawford.

Q. Did you and Mr. Crawford make a plat of the survey?

A. We did.

Q. Do you know whether it was filed in evidence in the suit that you have mentioned?

A. The plat and the report was filed in that suit.

Q. I will ask you to examine a certified copy of the plat, marked Plaintiff 30, and I will ask you to state whether that is a copy of the plat made by you in that case?

A. This is a true copy of the plat made by us in that case, as far as I can see. I have not the original to compare it with, but it is a certified copy from the Supreme Court, and it looks like a true copy of our plat.

163 Q. I will ask you to examine the plat marked Plaintiff 30 and to state what the plat shows.

Objected to by counsel for defendants as being matters between third parties, and it is irrelevant and inadmissible, and not alleged upon.

Objection overruled.

To which Counsel for Defendants excepts and reserves a bill of exceptions.

A. This plat shows the survey of two lines. We made the survey and it shows the result of our examination, and the finding of the contour line, one which we determined to be the mean elevation of the water at the present time, or in 1910, and also the extreme high water in 1910 up to that time. The green line represents the contour of extreme high water and the red or yellow line shows mean high water at that time.

The above objection ruling and exception is made general to apply to all evidence of like character.

Q. When was this survey made, Mr. Barnes?

A. It was made in the latter part of April and first of May, 1910.

Q. Was that before Mr. Kidder's survey?

A. Yes, sir, prior to Mr. Kidder's survey.

Q. State whether or not the plat shows the line marked green as the extreme limit of high water?

A. The green line on this map was extreme high water, determined by us by investigation on the ground, that is the highest evidence of water in recent years. It is possible that the water was higher than that back a great many years before, thirty or forty years but it did not leave any trace. The traces that we found were of the 1908 water.

Q. What does the red line indicate?

A. The red line indicates the line we determined to be the mean elevation of the water, average elevation.

Q. How much land is shown on the plat to be above the flood stage of the water?

164 A. The acreage shown on this map above the flood water is ninety-five and 52-100 acres in the southwest fractional quarter of section ten, and is shown by the green line.

Q. What is the area on the plat, shown to be above mean water elevation?

A. The area above mean elevation, spoken of as the yellow line on the map, shown as the red line, is one hundred and forty-two and 88-100 acres.

Q. Mr. Barnes, I want to ask you with reference to the area lying west of the green line, and I will ask you to state in what section that area lies?

A. That area is in the fractional southwest quarter of section ten.

Q. What does your plat show with reference to the area lying west of the green line, whether above flood stage or not?

A. It shows it above the flood stage that we determined to be the stage of high water in 1908.

Q. What does the plat indicate with reference to the lands lying within the green line, from the Western border to the eastern border of the green line, whether they were subject to overflow or not?

A. With respect to that land, that varies from one elevation to another from the mean water elevation to the extreme high water elevation of 1908. It varies all over that territory that you speak of, different elevations between those two.

Q. What do the black lines on that plat represent?

A. The main black line, the outline is the southwest fractional quarter of section ten, the theoretical fractional southwest quarter of section ten, drawn beyond the survey of Warren, and the irregular black line, is delineating the Warren traverse, taken from the Government field notes. That traverse was not run out by us jointly, but it had been run previously to the survey by Mr. Crawford and we walked out that line, but we did not make that by an actual survey at the time of the suit, but the line shows where it would have fallen had we made the survey.

Q. The Warren line had formerly been surveyed by Mr. Crawford?

A. It had been before we made the survey.

Q. Have you ever retraced Warren's line yourself?

A. Not through that territory, except to walk
165 over it with Capt. Crawford.

Q. You and Capt. Crawford agreed with regard to the restoration of the Warren line?

A. I did not retrace that. I have never made that survey, the survey of Warren's traverse around the fractional southwest quarter of section ten.

Q. As I understand it this plat represents the joint survey of yourself and Mr. Crawford?

A. It does, with the exception that the black line does not represent a joint survey of the two of us, as it was surveyed by Capt. Crawford previously.

Q. You went over the line of the Warren survey as retraced by Mr. Crawford?

A. Yes, sir. We were not supposed to reproduce the Warren survey. Our intention was to arrive at the mean water line and the extreme water, and the black line was just delineated on the map for comparison.

Q. What is the character of the land included by Warren in his survey of the fractional southwest quarter of section ten?

A. Well, there are two classes of land inside of the Warren survey. There is both high and low land. It is all more or less high land but there is quite a difference in the elevation. The North end of the tract surveyed by Warren is typical hill land, and the extreme southern end of the tract surveyed by Warren is high hill land, but through the center there is a low place that has some soft wood, but the timber is not exactly the same class as on the north and south ends.

Q. What have you to say with reference to the character of the land lying west of the Warrren meander line

in section ten, particular with reference to the fractional southwest quarter of the section?

A. The major portion of the land west of the Warren meander line is typical hill land.

Q. How does it compare, as to timber growth and topography with the land included by Warren in his survey of the southwest fractional quarter of section ten?

A. There is very little difference, except a small portion of the land that Warren surveyed, as I mentioned before is, lower land, a small portion in the center of the peninsula, as shown on the Warren survey.

166

Q. Is it very low land?

A. It is above mean water, between mean and extreme high water.

Q. With the exception then of the low place on the land surveyed by Warren, included in his survey of the fractional southwest quarter of section ten, the land which lies west is similar in character?

A. As a general thing it is similar to the land that he surveyed.

Q. Did you say or not that it was typical hill land?

A. Yes, sir, it is typical to that territory.

Q. Up land?

A. Yes, sir, up land.

Q. How does the altitude on the land lying west of the Warren meander line, compare with the land included within his survey.

A. Well in general, practically the same with the same exception of that one low place in the land surveyed by Warren.

Q. Do you know the area of the land omitted by Warren from his survey of section ten, above the mean water line?

A. Practically ninety-five acres.

Q. Practically ninety-five acres?

A. Yes, sir.

Q. In the fractional southwest quarter of section ten?

A. Yes, sir.

Q. Which section, if any lies west of the fractional southwest quarter of section ten?

A. Theoretically section nine lies west of section ten.

Q. Are you familiar with the land, if any in Section nine?

A. To a certain extent.

Q. You have been over it?

A. Yes, sir, been over all of it.

Q. I will ask you to state whether there is any land in section nine, lying west of section ten, omitted by Warren?

A. Yes, sir, quite a body of land in section nine, not surveyed by Warren or Bristol—Bristol surveyed some in section nine.

Q. How much land in section nine, that was not surveyed by Warren or Bristol?

A. That would be a guess. I have made that calculation but I have not the data here, but quite a body of land though.

Q. Do you know how much land altogether in sections nine and ten that was not surveyed by Warren
167 or Bristol?

A. I would have to guess at it, quite a body, but the acreage I could not say.

Q. Was there any land in sections fifteen and sixteen not surveyed by Warren?

A. There was?

Q. Or Bristol?

A. Or Bristol either.

Q. Do you know the area of the land omitted?

A. I know practically the area in section fifteen. I made a survey of that portion of section fifteen that

was omitted, and just from recollection I would say thirty-nine acres.

Q. Mr. Barnes, referring to the land omitted by Warren in section ten, what is the character of the timber growth on that land, and kind of trees?

A. It is typical timber to that territory, hill timber for that territory. There are three or four classes of oak, Post Oak, over cup in the lower territory, some black jack, red road, some few hickory. Typical hill grown for that section.

Q. What have you to say with reference to the timber growth on the land in section nine, sections fifteen and sixteen of township twenty north of range sixteen west, omitted by Warren?

A. The same class of timber on the land omitted, some sweet gum there.

Q. Any post oak?

A. I mentioned post oak.

Q. Did I understand you to say that the low land included in the Warren survey was above mean water?

A. Yes, sir.

Q. As determined by your survey?

A. Yes, sir, in section ten. This swag runs about through the center of the Warren surveyed land, east and west.

Q. How long have you been familiar with that land in section ten, Mr. Barnes?

A. Well, only since that date, 1910. I was familiar with other land around there prior to that, but not that particular land.

Q. How often have you ever gone over it, several times?

A. Since 1910 I have been over the ground
168 several times.

Q. What is your opinion with reference to whether or not the conditions which existed on the ground when you made your survey were the same conditions that

were existing in 1839 when A. W. Warren made his survey?

A. Apparently I would say there was no difference.

Q. What have you to say with reference to the correctness of the Warren survey in fractional southwest quarter of section ten?

Same objection, ruling and bill of exceptions as heretofore.

A. In what respect?

Q. As to the supposed meander line, with regard to the general elevation of the lake?

A. Well, it does not follow in any sense the sinuosities of the lake through the southwest quarter of section ten. Through the southeast quarter of section ten, it is a little closer, but in the southwest fractional quarter of section ten it departs materially from where the lake is at the present, or where it ever could have been, as apparently there is no change in the lake, except as to the water elevation.

Q. From your knowledge as a surveyor, and knowledge of the land and your investigation, do you believe that here has been any material change in the conditions which existed in that section since the time of the Warren survey?

A. I do not think there has been any changes except at certain times certain portions of land were submerged by water, during flood times, the part shown between the green lines have been submerged from time to time, but the general character of the land shows that there has been no change in the land itself.

Q. Or in the shore line?

A. No, sir, except during high water.

Q. Mr. Barnes, referring now to mean high water elevation, what do you say with reference to whether there has been any change since the Warren survey?

A. Since 1839, it is not apparent from the timber growth and the shore line, that there has been any change.

Q. As far as you know then, there has been no change with respect to the shore time, or timber growth
169 of the mean water elevation?

A. I do not think there has.

Q. Well, Mr. Barnes, if the conditions which exist, with respect to the timber growth, shore line and mean water elevation, were the same when Warren made his survey, as they are now, I will ask you to state as a surveyor whether there is any justification for the Warren meander line in section ten, that you know of?

A. In the southwest fractional quarter of section ten I do not see how it was possible for Warren to have run the line as delineated in his report, as the Traverse line.

Q. You do not see how it was possible to run his traverse line?

A. No, sir, so as to call it a traverse line of any stream or lake taking into consideration the conditions.

Q. As I understand it is your opinion that the marked conditions are the same?

A. They are, in my opinion.

Q. Mr. Barnes, what have you to say, as to whether or not Warren erred in running his west meander line of section ten, in the position it was run?

A. He erred if he called it a traverse line of the lake.

Same objection, ruling and bill of exceptions as heretofore.

A. If it was intended to be run as a traverse line of the lake he certainly erred. His line does not follow, as I stated before the border line of the lake, or any stream.

Q. Then, what would you say with reference to whether the error in Warren's survey is manifest error?

A. I would say that it was a manifest error.

Q. Mr. Barnes, I will show you the Warren plat of survey of this Township, which is marked Plaintiff No. 3 and I will ask you to state whether or not you are familiar with the quarter section corner, between sections ten and eleven?

A. Yes, sir, I am.

Q. Will you state whether or not there are any original evidence on the ground at that point?

A. Yes, sir. That point is reproduced in the original Government survey, taken from evidence of both of the bearing trees at that point.

170 Q. Is that point an undisputed point?

A. It is.

Q. Not subject to controversy?

A. No, sir, it is undisputed, by all surveys as far as I know.

Q. What are the original evidence of the Warren survey at that point.

A. The original evidence discovered there, were the brands or scroll marks in both the witnesses trees, both east and west. At the present time this evidence has disappeared. They were plain when originally uncovered.

Q. You were personally familiar with the quarter corner that I have mentioned?

A. Yes, sir.

Q. Have you seen the original evidence at that corner?

A. Yes, sir, I have seen the original evidence at that corner.

Q. Mr. Barnes, did you ever measure from the quarter corner of sections ten and eleven, down to the lake?

A. I have.

Q. Will you state whether or not—what was your purpose in making the measurement?

A. It was to locate and find, if possible any evidence at the meander corner on that section line, of the original survey.

Q. Did you find any?

A. We did not.

Q. At what point did you stop your measurement?

A. Well, my original measurement was stopped at the distance called for in the field notes. That distance is not on the plat and I do not remember now, but that was your temporary measurement there.

Q. When you terminated your measurement at that point, did you reach any conclusion with reference to high water elevation?

A. I could not say exactly. I know that that point falls on ground away above the limits of the edge of the lake there, the bank is very gently sloping, not a bluff bank, and could make a horizontal difference there, a great difference, say of forty, fifty, or a hundred feet and it will make very little difference in elevation. The elevation we found there, could not say whether
171 mean high water or not, as it was on this gentle slope.

Q. Referring to the meander corner of sections ten and eleven, I will ask you to state whether or not Warren terminated this line at what he considered mean high water elevation?

A. I suppose that he did.

Q. Does it purport to represent where Warren found it?

A. The measurement from the Warren quarter corner falls on this gentle slope, not far from the actual lake today, and without knowing the elevation, I know that it was some place close to the 173.09 foot contour, within what limit I could not say, may be one, two or three feet one way or the other.

Q. It was approximately on the 173.09 foot contour?

A. Yes, sir.

Q. State how the point at that fixed corner, compared with the mean high water elevation, as determined by

you in the survey that you made under the order of Court?

A. I could not tell within a limit of two or three fell.

Q. Well approximate it?

A. It is approximately within two or three feet of the elevation fixed by us, either higher or lower, I could not say, because that point was not fixed by us in that survey.

Q. You were determining in this survey the mean high water at the time of the survey?

A. Yes, sir, and for several years previous.

By Master:

Q. The field notes called for the distance between this undisputed corner, which is the quarter corner of sections ten and eleven that corner is undisputed?

A. Yes, sir.

Q. The field notes called for the distance from that to the meander corner?

A. Yes, sir.

Q. Did you measure that distance?

A. Yes, sir.

Q. To correspond with the field notes?

A. Yes, sir.

Q. And theoretically located the meander point?

A. Yes, sir.

Q. There was no trace of the corner?

A. No, sir.

Q. That was some little distance up the slope
172 from the water as it exists today?

A. Yes, sir.

By Mr. Hunter:—

Q. As I understand you, you theoretically located the mean high water elevation, as established by Warren al-

though you did not find any evidence of his meander corner at that point?

A. No, sir, we did not attempt to find the mean high water established by Warren. Our running to that meander corner, coincides as I may say within two or three feet, of the elevation that we fixed to our line, but that meander corner, we were not at the time trying to establish the mean water, at the time of the Warren survey.

Q. Now, having located that undisputed corner, between Sections Ten and Eleven, is it possible to reproduce the Warren meander line in Section Ten?

A. Approximately from the Warren corner.

Q. Now that is an undisputed corner?

A. Yes sir, locate it approximately from that corner and other points to tee in to.

Q. Have you examined Mr. Kidder's plat of survey?

A. Yes, sir.

Q. If the high water elevation, as found by Mr. Kidder is correct as it existed at the time of the Warren survey, I will ask you to state whether or not Warren, if he had run his meander line at that same elevation around Section Ten, would he or not have included the land in this suit, in his survey, instead of omitting it?

A. Well, I understand that the whole Fractional South West quarter is involved in this suit, outside of the original Warren survey—that being the case, if he had allowed the contour of 173.09, he would have included all of it in his survey.

On Cross Examination he said:

By Mr. Smith:—

Q. Mr. Barnes, if in 1839, it should develop that the flood level was seven feet higher than today, then you would have been deceived as to the evidence, in doubt as to the meander line?

A. Yes sir, if the flood level of 1839 was seven feet above the flood level we gave.

173 Q. You say that in 1908, that from the evidence on the banks and trees, the situation is the same as when Warren made his survey in 1839?

A. Yes sir, as to the land.

Q. Now, if you found it that instead of the level of 1908, that the water was seven feet higher in the lake in 1839, than you found it in 1908, then you are mistaken as to the situation?

A. I say it was possible for it to have been seven feet higher during flood stages.

Q. Suppose that the mean water level was 173.09, and that it was seven feet higher than it is today, that brings about a situation never thought of?

A. The situation of the ground and the timber growth brought me to the conclusion that that was impossible.

Q. You are a considerable woodsman, do you think it possible for the water to have been seven feet higher, as mean water level?

A. Yes, sir, as mean water level.

Q. So if Warren ran his survey at mean water level of 173.09, you say that is an impossible situation?

A. I do not understand your last question.

Q. If the mean water was seven feet higher than when you ran it you do not see how such a condition could have been possible?

A. I do not see how Warren could possibly have run his lines at all under those conditions.

Q. Well, in other words, you do not believe there has been any drop in the level of the waters in Ferry Lake since the Warren survey?

A. It is possible that the water has receded, the same general average of the water.

Q. You would be very much surprised to find that it had receded at least seven feet?

A. From the timber growth and the conditions I would, the general water, the mean water level.

Q. Mr. Barnes, you are somewhat a woodsman yourself?

A. Not very much. I take a great deal of interest in tree growth.

Q. You know how to count the rings and determine the age of trees?

A. Yes, sir.

Q. You know the trees that grow on a certain
174 level?

A. Yes, sir.

Q. You are not a graduated Ecologist, but you know something about it?

A. I have tried to find out something about it.

Q. You have made a profound study in this section, as a Surveyor?

A. Outside of Ecology.

Q. You say from your study of the bank conditions and the trees live, it is impossible for the flood level to have been seven feet higher than the 173.09?

A. Not only those conditions, but the actual Warren survey itself all of those things taken into consideration it was impossible for the average water to have been seven feet above the 173.09 foot contour.

Q. You say that is impossible?

A. Looks impossible to me.

Q. Well, when you figured your mean level there you did not go alone on the data from Biloxi, bench marks?

A. We took into consideration the actual condition of the ground around, even found the elevation of the lines run, the contour line.

Q. Did you know anything about the bench marks?

A. Not at that time, knew them but did not find any.

Q. Do you know anything about the action of the raft?

A. Only what I read in the reports and that is all heresay.

Q. You do not know whether that affected this lake situation or not?

A. I do not.

Q. You do not know whether it affected the flood level or not?

A. No, sir.

Q. But you know from your large experience as a Surveyor, that it would have been practically impossible for the water to have been seven feet higher, mean water, than it is today?

A. Yes sir, that is seven feet above the 173.09 in 1839.

Q. Seven feet above the average high water?

A. The water is not 173.09 today. The water only stands at 167 foot elevation, the elevation with the present dam.

Q. You take it then that it was ever 173.09 mean high water?

175 A. I do not know that 173.09 was mean high water in 1839, that is a supposition—I have answered all questions on that supposition that that was mean water line.

Q. What was the mean high water elevation there in 1916?

A. I say that we did not have the elevation, did not tie in with the Government bench mark.

Q. In 1910, you arrived at it from the actual evidence?

A. Yes, sir.

Q. In your view as an expert surveyor, you could not see how it could have been seven feet higher than the line you fixed?

A. No, sir, except temporarily.

Q. Mr. Barnes, did you have occasion, down in the disputed area, to count any of the ring growth of the trees?

A. No, sir. I just noticed the general growth, I did not count the rings.

Q. You found a very few old trees, but as a rule you find the great majority under one hundred years old?

A. Yes, sir, the majority were.

Q. Showing a comparative young growth?

A. The dense growth was young, but there are quite a number of old trees there.

Q. Where were those old trees located?

A. The main part of the old trees was on the Western boundary, where the ground was higher than the average and on the Northern boundary, that is my recollection. There is some old timber scattered all through the place but the majority North and West.

Q. Were you on this land in 1908?

A. No, sir.

Q. Of these disputed tracts, a considerable part went under in 1908?

A. Yes, there was a small portion of this that is in dispute that went under in 1908, that portion lying between the black line on Map marked No. x 30 delineating the Warren survey and the green line delineating extreme high water.

Q. Then if you added seven feet more to the high water, then it would put pretty much everything up there under water?

A. It would have submerged quite a bit of that territory, but how much I could not say, but it would have submerged a good bit more.

176 On Re-Direct Examination he said:

By Mr. Hunter:—

Q. Mr. Barnes, referring to the present mean high water elevation of Ferry Lake, I understand you to say, you did not fix that elevation with reference to Gulf level?

A. No, sir, in this suit we did not.

Q. Did you not connect your survey with the Government survey?

A. No, sir.

Q. With the Government bench mark?

A. No, sir.

Q. What is the present mean high water elevation of Ferry Lake, do you know?

A. I do not.

Q. Have you—can you approximate it, you said something about 167?

A. 167 foot, after the investigations I have made, we put the average elevation of the water, as near as we could arrive at it in the past thirty or forty years, but the mean elevation in 1838 and 1839, we did not attempt to arrive at, and our deduction was as low as 166.05, what we call for years the average water of the lake.

Q. The average water of the lake, according to your conclusion and investigation, for several years prior to your survey, and at the time of your survey was 166.05?

A. Yes, sir, 166.05, that is a little lower than it stands today on account of the dam.

Q. Now, so far as your conclusions and investigations are concerned, how far back, from your survey, would that elevation extend?

A. I would say thirty or forty years, possibly longer, but not positive any longer than that, back from the present time, the growth along the edge of the lake the average was around 166.05.

Q. For thirty or forty years prior to your survey, you think that the mean high water of the lake was 166.05.

A. Mean high water is a bug bear to me, I rather call it average water.

Q. Call it average water?

A. Yes, sir, average was of the lake was around 166.05.

Q. For thirty or forty years prior to your survey it was 166.05?

A. Yes, sir, from the result of my investigation.

Q. Now Mr. Barnes, if the elevation of the
177 lake in 1839, when A. W. Warren made his survey was 166.05 what effect would that have had with respect to the land that Warren omitted from his survey?

A. If Warren had followed the contour of 166.05 with his traverse line, he would have included more land than there is in dispute in this case.

Q. I will ask you to examine the resurvey play of Township Twenty North of Range Sixteen West, marked Plaintiff No. 8, with reference to the dotted line running around the margin of the lake and assuming that that line represent the 173.09 foot contour, when Warren made his survey, I will ask you to state if instead of being 173.09, the average water elevation of the lake, when Warren made his survey was 166.05, whether or not Warren, if he had followed that elevation, would have included more land than is shown on the resurvey plat?

A. Warren would have included more land than is shown by the dotted line.

Q. Had he followed an elevation, in running the meander line of 166.05, would he have included in his survey, the land in controversy, consisting of Lots Eight, Nine and Ten of Section ten?

A. Yes, sir, he would have included all of lots eight nine and Ten of the extension survey as shown on Plat 8.

On Cross Examination He Said:—

By Mr. Storey:—

Q. Have you ever had an opportunity to check Mr. Kidder's survey in Township Twenty North, Range Sixteen west?

A. Mr. Kidder and I have had quite a little dispute there over running lines.

Q. Have you ever had an opportunity to examine that survey of Mr. Kidder's?

A. Yes, sir, thoroughly.

Q. How does it compare with the survey made by Warren in 1839?

A. As to the lines run by Mr. Kidder, I have some differences as to the location of the section corners, but the horizontal difference we make on the ground would make very little difference in elevation.

Q. Mr. Kidder's survey practically retraces
178 and reproduces the Warren survey?

A. Well I would not say it did in every detail, my contention is that it does not in all details.

Q. Now in what particular?

A. The location of the section corners. Our main difference is around Section Three, establishing the Northern line of Section Three, the Township line between Township Twenty One North of Range Sixteen West and Township Twenty North, Range Sixteen west.

Q. In what particular does Mr. Kidder's survey differ from that of Warren, in your opinion at that point?

A. Our main difference, is the difference between the Kidder survey and the original Williamson Jones survey, in the Township line.

Q. Now what is that?

A. A difference in the location of both the North East Corner of Section Three and the quarter corner on the North side of Section Three and the meander corner of three, fractional section three.

Q. What difference is that between the Warren and Kidder surveys in that particular corner of the section that you do not agree with Mr. Kidder?

A. I think that Mr. Kidder's points are too far East.

Q. How far East do you think they are, from the Warren point?

A. The point there is a difference in distance East, does not substantially vary, but our difference is as to the location of the points.

Q. Well, what effect does that difference have upon this survey in locating the land in controversy?

A. In this survey of the southwest fractional quarter of section Ten it would have very little effect on it. The difference is so small, the actual difference in area would not figure, in percentage would not make a difference of but one or two percent in the area itself.

Q. Then Mr. Kidder practically reproduced the Warren survey?

A. Except as to that detail, that is my idea.

On Re-Direct Examination He Said:

179 By Mr. Hunter:—

Q. Mr. Barnes, referring to the reproduction of the Warren survey in Section Ten, affecting the land in controversy, is there any material difference between you and Mr. Kidder?

A. No, sir, there is not. The quarter corner between Sections Ten and Eleven, is accepted by everyone, the original Government corner, and also by Mr. Kidder and the extending of the Warren survey from that corner to the West and around the Warren traverse, it would take quite a broad difference in the North West fractional quarter of section ten to make any material difference in the location of the southwest quarter of section Ten.

Q. The difference then is comparatively negligible, in respect to land?

A. Yes, sir.

Q. I will ask you whether or not the difference, if any between you and Mr. Kidder respecting his reproduction of the Warren survey in Section Ten, is such as to change

in any way the location of those lines or the area involved in his survey in that section?

A. The change would be so slight that it would be negligible, would not be enough to make any material difference.

On Cross Examination He Said:—

By Mr. Storey:—

Q. Don't the Kidder survey show that meander corner that he has Twenty feet East of what you put the Warren meander corner, the meander corner between sections Three and Ten?

A. I do not know the exact distance, but it was East of our corner the distance I do not remember, but it was around twenty feet.

Q. Did you follow the Warren and Bristol surveys?

A. We attempted to follow the Warren and Bristol surveys.

Q. And in your opinion you say that he was Twenty feet East?

A. I do not say twenty feet, but something like that distance.

Q. How far was he east at the Warren meander corner at Section Three?

A. That was the Williamson Jones meander corner, according to my idea, thirty links, approximately or twenty feet.

On Re-Direct Examination He Said:

180 By Mr. Hunter:—

Q. Mr. Barnes, I hand you plat marked Plaintiff No. 18, annexed to the transcript in the case of the Producers Oil Company vs. Lydia Hanson et al and I will ask you to state whether you know who made that plat?

(Showing witness document)

A. Without referring to the brief in that case, I could not say whether I made that plat or not. I know that this plat was used in that case. I may have made that or not. I am under the impression that I made it.

L. Z. CRAWFORD, a witness for the Plaintiff, being first duly sworn, testified as follows:—

On Direct Examination He Said:—

By Mr. Hunter:—

Q. Capt. Crawford, where do you live?

A. I live in Caddo Parish.

Q. How long have you lived here?

A. I came here in 1881.

Q. What is your occupation or profession?

A. Well, Civil Engineer and Surveyor.

Q. How long have you been a Civil Engineer and Surveyor?

A. I suppose fifty years, or a little over, I was nineteen when I started and I am a little over seventy now, as near as I can count it, a good while.

Q. Have you practiced your profession in the Parish of Caddo since you have been living here?

A. Ever since 1882, with the exception of some little intervals.

Q. State whether or not, acting under an order of Court, in suit No. 13,707, entitled Jeems Bayou Fishing and Hunting Club vs. Board of Commissioners of the Caddo Levee District, you made a survey of land in the Fractional South West quarter of Section Ten, Township Twenty North, Range Sixteen West?

A. I did in company with Mr. Barnes.

Q. Did you make a plat of that survey?

A. I think that Mr. Barnes made the plat. We kept the notes together; he took a copy and I a copy
181 and he made up the map and I approved it and signed it, made in accordance with our survey.

Q. Do you know where the original plat is?

A. No, sir.

Q. I will ask you to examine the plat that I show you now, marked Plaintiff 30, certified to by the Clerk of the Louisiana Supreme Court?

A. I suppose that the plat is on record.

Q. The case was appealed to the Supreme Court?

A. Yes, sir, I identify that plat?

Q. You identify that plat?

A. Yes, sir.

Q. Mr. Crawford, did you reproduce the Warren survey of the Fractional South West quarter of Section Ten?

A. As near as I could.

Q. From what point did you start?

A. We started from the quarter corner of sections Ten and Eleven.

Q. Is that the corner just testified about by Mr. Barnes, who has been on the stand.

A. I am a little hard of hearing, and I do not know, but it is the United States corner. That is the original corner, but I will say we had not uncovered that line at that time, and my line was seventy links to the corner and about in line with the meridian of the line but it lay to the North about seventy links, north of the true corner.

Q. Do you know that to be a true corner?

A. Yes, sir.

Q. How do you know it?

A. When it was uncovered it had the Township, Range and Section in the tree.

Q. Was there one tree, or two trees?

A. There were two trees but I did not cut, I did not cut into them. Mr. Martin in his survey was there before I was there, after I made this survey and went there and projected other surveys from that, and it was typically marked, Township, Range and Section number.

Q. Was it one of the original bearing trees in the A. W. Warren survey?

A. Yes, sir, to the best of my belief it was.

Q. Those trees were situated at the quarter
182 corner between sections Ten and Eleven?

A. Yes sir, bearing on the quarter corner.

Q. I believe that you stated that you started at that point, but that they had not been uncovered at the time that you made the survey?

A. No, sir.

Q. You however started at a distance seventy links from that point?

A. Yes, sir.

Q. In which direction?

A. West.

Q. What effect did that have in your retracing the Warren line?

A. Running the same bearing as Warren would put me seventy links to the North of him, and about even East and West.

Q. Did that difference have any material affect in the position at which you ran the Warren line?

A. Well, no, because when I ran the Warren line, when I got up to the corner between sections Nine and Ten, I ran on down South to where the corner was indicated, at the distance and turned on it and followed his field notes until we run to the lake, so I do not suppose it made any difference, because it is my belief he never did survey that ground.

Q. It was your belief that Warren did not make this survey in section Ten, on the ground?

A. No, sir, I do not think he did.

Counsel for Defendants makes the same objection as heretofore, same ruling and bill of exceptions reserved.

A. (Continued.) I however came on back and went to the corner and went out as indicated by my field notes, measured around until I come to the corner again.

Q. What I would like to know, is whether or not the difference between your starting point and the true corner, between sections Ten and Eleven, made any material difference in your retracement of the Warren line?

A. I could not see that it would, unless it was an extremely valuable, a strip across there of seventy links, about fifty feet, threw his line higher up.

183 Q. Only make a difference of about fifty feet?

A. Yes, sir, somewhere about that, forty-five or fifty feet.

Q. What does the green line on the plat represent?

A. Flood stages.

Q. What does that plat show, with reference to the land lying between the green lines?

A. Low land, there was evidence of floating dead timber, dead timber had floated all around on this land.

Q. Now what does the plat show with reference to the land laying west of the green line?

A. Up land?

Q. What does the red line on the plat represent?

A. That is the mean high water line.

Q. What have you to say with reference to the character of the land included in the Warren survey of the Fractional South West quarter of Section Ten?

A. About one third, or possibly more, very low land, swag, kind of a dip running the whole length of it, going

out from the quarter section line running in a South Westerly direction, and inclined a little to the East, and ran into the lake on the East line of the traverse.

Q. Ran into the lake on the East traverse line?

A. Yes, sir.

Q. You stated in your opinion that Warren did not run this line on the ground, awhile ago, will you give your reasons upon which your opinion is based?

A. Well, when Warren run out, these lakes were full from the raft and those Bayous coming in there, Dooley, Swift and Red Bayous were pouring over into the lake, and that of course would have kept the water higher at that time than it was at the time I was trying to follow his lines. The whole truth of the matter is, if he surveyed this he was surveying in a different section without knowing it, that is my belief.

Q. Are you familiar with the land lying West of the Warren meander line in section Ten?

A. Yes, sir, to some extent, surveyed it all two or three different times.

Q. What have you to say with reference to the
184 character of the land lying West of the Warren meander line of Section Ten, which were omitted from his survey?

A. Generally up land, above flood stage, or any ordinary flood stage, without extra ordinary high water above flood stage.

Q. What is the character of the timber growth on the land in Sections Nine, Ten, Fifteen and Sixteen, omitted from the Warren survey?

A. It is oak, hickory, occasionally a little pine, overcup, some black jack. It was typical hill growth: Post oak, red oak, overcup hickory, and the under growth made up of some mahaws.

Q. State whether or not the timber growth on the land is typical to hill land in that section of country?

A. It is. It is what we called in Mississippi, hammock land, dogwoods and Post oak.

Q. Are there Post Oaks on the land?

A. Yes sir, or were.

Q. Is that land, which Warren omitted from the survey in these sections, nine, ten, fifteen and sixteen, up land?

A. Yes sir, in Nine I would swear to, I think that I have surveyed all of Fractional section Nine down to sixteen and run across about the same character of land, with hill growth.

Q. How does the land, which Warren omitted from his survey in section ten and the other sections I have mentioned, compare in topography and timber growth, with the land included by him in his survey?

A. Higher land.

Q. Higher land?

A. Yes, sir.

Q. What have you to say, with reference to whether or not Warren in surveying the fractional South West quarter of Section Ten, included in his survey, about the lowest land in that section?

A. Well yes, it did include some of the lowest in it.

The trial of this case was continued until April 27th, 1918.

April 27th, 1918, all parties being present the trial of the above cause was resumed.

185 L. Z. CRAWFORD, being on the stand his direct examination was resumed.

(At request the Stenographer read to the witness the last question and answer, before adjournment).

A. (Continued). I would like to qualify that part of it is the lowest land, the most of it is about the lowest land in the section.

Q. The land that Warren included in the fractional South West quarter of Section Ten, was about the lowest land in the section?

A. Yes, sir, about the lowest.

Q. Capt. Crawford, what have you to say relative to the correctness of the Warren survey of the fractional South West quarter of Section Ten?

Counsel for Defendant makes the same objection as heretofore, same ruling and bill of exceptions reserved.

A. Technically correct, it pans out and exactly closes, but I do not think that he ever put it on the ground through.

Q. What have you to say, with reference to its correctness in connection with the omission by him of the high land, lying to the West of his line?

A. That is a question that I cannot answer. I do not know his reason.

Q. I did not ask you his reason, I asked as to the correctness of his survey in omitting the high land?

A. Well, it was an incorrect survey, as far as that is concerned, as I understand it the intention was for these old Deputy Surveyors to survey the high land for the Government, up land. It is not correct. As I understand the surveyors were to survey up land and there is a portion of this that cannot be embraced in up land cannot be classed as up land.

Q. A part that Warren included in his survey?

A. Yes, sir, that is that he included in the fractional southwest quarter of section ten in the line he ran.

Q. The land that he omitted west of his meander line in the fractional South West quarter of section ten is up land?

A. Yes sir, higher land than where he surveyed.

Q. State whether or not, in your opinion, the error committed by A. W. Warren, in omitting these lands
186 lying West of his meander line, is a manifest error or not?

A. I think if is, if he was intending to survey the up lands, the high land, it was a manifest error. If you will allow me to explain, I was told—I got the impression that Mr. Pitts—

Objected to by Counsel for Defendants as heresay.

Objection sustained by the Master.

Q. From your knowledge of the land, and your knowledge as a surveyor, do you know whether or not Ferry Lake has receded since 1839?

A. Yes, it has receded.

Q. To what extent has it receded?

A. Well, from five to seven feet I would say. Just allow me to explain my reasons—There were several feeders, bayous that broke out of Red River, that came into the lake. There was Dooley's bayou Scotts Slough, Kountz Canal and Hirley and Red Bayou, which threw the waters from Red River in ordinary stages of Red River back into these low lands, as the raft in Red River held the waters back, and the water flowed through these bayous into these low lands, and it was carried in Soda Lake, Ferry Lake, Shiftail Lake. When they cut off the bayous about 1892 or 1893, levid off, of course that cut off the supply

of the river into these bayous and Lakes, so that the water had to come around by Shreveport and back up there, which it does sometimes now. The difference in elevation is sufficient to allow Soda Lake to get dry, dry entirely across it, have driven across it, but as early as 1892 or 1893 we had steam boat route to Jefferson, in fact I have gone around in steamboat route to Jefferson, in fact I have gone around in steamboats from Shreveport, around through the lakes and out through Bodcaw Slough, while that was a navigable stream at that time, clear out to above the raft. After the raft worked out they renewed the navigation through Red River.

Q. In your opinion, as a surveyor, and from your knowledge of the lake and lands surrounding the same, what was the mean high water elevation of Ferry Lake in 1839?

A. Greater than it is now, from five to seven feet.

Q. You think that the mean high water elevation of 1839, was five to seven feet higher than it is now?

A. Yes, sir.

187 At this point Counsel for Plaintiff offers in evidence plat of survey identified by the witness and marked No. 30.

Counsel for Defendants, makes the same objection as heretofore and that this is between third parties and not pertinent or admissable.

Objection overruled.

To which ruling Counsel for Defendants except and asks that this note stand in lieu of formal bill of exceptions.

Filed in evidence and marked Plaintiff's No. 30.

Q. I show you plat marked Plaintiff 30, and will ask you to state whether or not the land lying between the green lines was subject to overflow?

A. Well, yes it was subject to overflow at that time—at that time we met up with the drift wood along there.

Q. Now take the lands lying West of the green line in the fractional South West quarter of Section Ten, I understand you to say that land was not subject to overflow?

A. No, sir, in my opinion it was not.

On Cross Examination He Said:—

By Mr. Smith:—

Q. When did you come into Caddo Parish?

A. In 1881.

Q. 1881?

A. Yes, sir.

Q. Your testimony as to conditions prior to 1881 is just from tradition and what you have heard?

A. Yes, sir.

Q. How soon after you came here in 1881, were you up in this country, Township Twenty North of Range Sixteen West?

A. In 1881 I went right there.

Q. Now Capt. Crawford, in running the sinuosities of a stream or lake, don't you find that the Government surveyors have not been very accurate, in a great many parts of the Parish?

188

A. Yes, sir.

Q. You find in some places that they omitted high land and took in low land at other places?

A. Yes sir, but very rarely took in low land.

Q. In surveys made by the United States surveyors or Deputies?

A. Yes sir, rarely took in low land, but frequently left out high land.

Q. You are familiar with the Williamson Jones survey?

A. Yes, sir.

Q. I appreciate the evidence, he took in the low land, took in a body of water to complete his survey, making the sections full sections?

A. Yes, sir.

Q. If you would exclude these low lands and reclaim these high lands, erroneously embraced, it would disturb patents considerable in this Parish?

A. Yes, sir.

Q. Now about the acreage of the various sections, that varies very considerably from what they show on the map?

A. Well sometimes, but as a general rule these sections are nearly square and there is about what they say is in them, though sometimes there is more or less.

Q. You have seen some sections in this parish, that are anything but square?

A. Yes, sir.

Q. Would you not think it was a very unsafe creterion, to judge what was omitted land by adding the acreage in a section as given by the United States surveyors?

A. I do not understand your question exactly.

Q. To attempt to arrive at the omitted area, or what was omitted by the United States Surveyors, do you think that you could arrive at that by surveying out the high land and adding the acreage shown in the various sections and arrive at any amount correctly in that matter?

A. Well, I do not know, I have never thought about that. The high lands I can survey them out and give correct data on that, but the low land, but that would be supposition.

Q. It is not a safe criterion to go by the acre-
189 age put in the various sections by the surveyors?

A. Generally pretty safe, because within an acre or two of it, but sometimes not.

Q. Have you ever had occasion to survey section three in this Township?

A. Portions.

Q. It is about ten acres short?

A. Yes sir, I think so, that is my opinion.

Q. How many other sections in there that are short?

A. I cannot recall now particularly.

Q. There are a number bordering on this lake?

A. Yes sir, to take the traverses that have been run out, meander line, and the sections lines, there is really more high land than they put down, those that go along on the lake. I had occasion to run some meander lines along in front of section Sixteen and then at a point South of section Sixteen and I got a quarter of a mile from the Lake, in some portions, in some places they went away out into the high land, ran away out to the left, that would have been a shortage of the land that ought to have been embraced in the United States survey.

Q. Didn't the surveyors at that time representing the Government when the land was valueless, sometimes leave it out?

A. In one place, I think the Williamson Jones or the Warren survey they stated that there was a portion of the land along James Bayou that was not worth surveying.

Q. I will ask you, in section Ten, in the early days, say 1839, if this land that they claim was omitted, if it was hardly worth surveying at that time?

A. Hardly, I expect every bit of it could have been surveyed as it was high land.

Q. Have you ever put the level on that land in order to tell how it slopes?

A. I did not run the contour across it, but I did run a rough level around the survey, the green line on the map.

Q. Do you know, from tradition whether the water got a great deal higher than seven feet above the present level, during the raft period?

A. I do not know.

Q. If it got to 180 foot contour it submerged
190 a great deal of the land, about how much do you know?

A. No, sir, but from 173.09 to about 180, about seven feet it might possible have put under some of it, but the line that Barnes and I ran we kept on the outside of the drift, which had been put there from the overflow.

Q. You are speaking of the overflow of 1908?

A. Yes, sir.

Q. Well now when the water level is at the present elevation of 167, you say the west of the Pitts peant, in Section Ten there is a considerable area that went under in 1908, now what would you say that if in 1839 the water level was 173.09, and at least seven feet of high water over that, would not that carry under the greater part of Section Ten, this omitted land?

A. May have done so.

Q. The high water usually comes in the spring of the year?

A. Yes, sir.

Q. If Warren was there in the early spring, is it not possible that a great deal of it was under water?

A. About May or June is usually the high water?

Q. You have seen high water earlier than that?

A. Yes sir, have seen high water in December.

Q. And in February and March?

A. Yes, sir, but it is generally feared more by the people in the bottom in May and June than any other time.

Q. Have you ever, from any of your visits to Section Ten, noticed any of that land in cultivation?

A. No, sir.

Q. Have you ever tried to ride a horse across some of these low places in it?

A. No, sir, but almost any of that land, where there are little flats is boggy in very wet weather, my place for instance, several miles from there.

Q. You noticed the growth of the timber through there—there are some big trees, but as a matter of fact is not the most of the growth under one hundred years old?

A. One hundred years is further back than I can go, but it appears less than a hundred years, not mature timber.

Q. The timber not being mature, shows a com-

191 parative recent growth?

A. That particular timber is, but then fire, and drouths kill a lot of timber and overflows kill a lot, but the overflows do not kill so much as the water does not stand long enough. Without it stays a month or such a matter it does not kill it, as the nature of the timber that is subject to overflow don't die from water, like overcup oak, unless it stands for a long time.

Q. If you had the water on the level of 173.09 foot contour for several months of the year and then had seven feet of water on top of that, don't you think that that would kill out a great deal of this growth?

A. Yes sir, to have it for several months.

Q. You find that it is a comparatively recent growth of timber?

A. Some is and some is not, just like the ordinary forest lands.

Q. How have been over that pretty well, is it not a comparatively small amount that is old timber?

A. Well yes, for the simple reason that a great deal of the old timber has been cut out, by the tie makers.

Q. Now, in this particular part of Section Ten, do you find any evidence of the timber having been cut out?

A. I do not remember now, but I suppose, like all around there it has been cut. I know that there is a portion of Section Nine bordering along it that has been cleared.

Q. Do you know when Pitts—did you know the Pitts that entered the fractional South West quarter of section ten?

A. Just from tradition. I did not know him personally at the time.

Q. You knew though, the land that they entered?

A. Yes, sir.

Q. You knew that they were exercising dominion over it?

A. Yes sir, that is to the black line.

Q. You knew that they were in possession of that part of the land?

A. Yes sir, I surveyed for Rush Pitts.

Q. How many years ago?

A. Well, the first time, it strikes me, I have not the records with me, but I expect that it has been fifteen or eighteen years ago, when I first went in there to survey for Pitts, and afterwards he told me that he was thinking of selling it, in fact did sell it and then I
192 surveyed it for him again, then I surveyed the piece for the Club.

Q. Then prior to that Pitts had been in possession of the fractional South West quarter?

A. Yes, sir.

Q. How much area was found in the Pitts fractional South West quarter?

A. I do not remember now, I suppose that it was put down there as fifty or sixty acres, I suppose.

Q. You knew that his patent put it down as Twenty three acres—you remember that the patent put it down as twenty three acres, but it contained a great deal more acreage than that?

A. Yes sir, more than twenty three acres in there, forty-seven and 88-100 acres put down on here.

Q. You will notice that Warren gives it as fifty-five and 88-100 acres?

A. Yes, sir.

Q. And in the South East fractional quarter of section ten, there is twenty three acres in that little strip?

A. I never had occasion to survey that.

Q. It is marked on the map here as twenty-three acres?

A. Yes, sir.

Q. Now, if twenty three acres was placed as the acreage of the fractional South West quarter, I will ask you if that was correct or was an error?

A. I cannot say.

Q. You know where the twenty three acres of the fractional South West quarter of section Ten entered by Pitts?

A. It is put down on my survey as forty-seven and 88-100 acres.

Q. Warren give it as how much?

A. Fifty-five and 88-100 acres.

Q. Mr. Crawford, now here is the patent of the United States to S. D. Pitts, to the South West fractional quarter of section Ten, Township Twenty North, Range Sixteen West, containing twenty three acres, according to the official play of survey of said land returned to the General Land Office, by the Surveyor General, which said tract has been purchased by the said Stephen D. Pitts—now the Government survey made by Warren
193 shows the fractional South West quarter as containing fifty five and 88-100 acres?

A. Yes, sir.

Q. So that it is mentioned in here as Twenty three acres in the patent, I will ask you if that is not a patent error?

A. Yes sir, bound to be, as far as the confirmation of the ground is concerned.

Q. You found more than twenty three acres?

A. Yes sir, we found forty seven and 88-100 arces, practically forty eight acres.

On Re-Direct Examination He Said:

By Mr. Hunter:—

Q. Capt. Crawford, referring to the high water elevation in 1839, I will ask you to state whether or not it is a fact, that in the event the water was seven feet higher than the 173.09 foot contour when A. W. Warren made his survey, if the greater portion of the land which he included in his survey of the fractional South West quarter of Section Ten, would have been overflowed, very deep under water, had the water been at an elevation of 180, when he made the survey?

A. Possibly it was, that was made in January, evidently before high water, when he pretended to have made it, but I do not think that he made it on the ground at all.

LESTER L. CLEMENT, a witness for the Plaintiff, being first duly sworn, testified as follows:—

On Direct Examination He Said:—

By Mr. Hunter:—

Q. Mr. Clement, where do you live?

A. Bunt, Iowa.

Q. Do you hold any official position with the Government?

A. Yes, sir.

Q. You are a United States Surveyor?

A. United States Cadastral Engineer.

Q. What does that mean?

A. Cadastral pertains to the surveying of
194 areas of land and mapping same, giving a definite location to all objects.

Q. How long have you been in the employ of the Government?

A. Since June 1908.

Q. In what Department do you perform your duties?

A. General Land Office, Department of the Interior.

Q. Are you a surveyor, Mr. Clement?

A. Yes, sir.

Q. How long have you been a surveyor?

A. Since my graduation from College in 1906.

Q. What College did you graduate from?

A. The School of Mining and Engineering, University of Minnesota.

Q. Have you had much or little experience in surveying since your graduation?

A. I have had practically constant experience in surveying since my graduation.

Q. Have you performed surveying work in different parts of the United States for the Government?

A. In a good many of the States.

Q. State whether or not you are familiar with the land in controversy in this suit?

A. I am.

Q. When did you first see these lands?

A. In December 1916.

Q. In what capacity and for what purpose did you visit the land?

A. I visited the land in controversy for the purpose of executing an extension survey to cover the land.

Q. Do you know whether that extension survey was made under the authority of the Commissioner of the General Land Office?

A. It was made under the authority of the Commissioner of the General Land Office.

Q. How long did you remain in this neighborhood, when you were executing the Extension survey, when did it begin and end?

A. It began in December, 1918, and ended in February, 1917, the date will be found on the plat, it was the latter part of January or the first part of February 1917.

Q. I hand you plat marked Plaintiff 9, being Supplemental Plat of Township Twenty, North, Range Sixteen West, Louisiana Meridian, Louisiana, approved by the Commissioner of the General Land Office on March 28th 1917, and plat marked Plaintiff No. 10, being supplemental Topographical plat of this Township approved the same date, and I will ask you to state whether or not these plats represent the result of the Extension survey, to which you have referred?

195

A. Yes sir, they do.

Q. Are they correct representations of that survey?

A. They are.

Q. Was the extension survey, actually executed in the field, on the land?

A. Yes, sir.

Q. State who was in charge of the surveying party?

A. Mr. Arthur D. Kidder, Supervisor of Surveys.

Q. Was he present throughout the work?

A. He was.

Q. Did he have any other assistants besides yourself?

A. Yes sir. Mr. Albert Smith Jr. United States Surveyor.

Q. State whether or not Mr. Kidder had the necessary assistants and instruments to properly execute that survey?

A. The survey was executed with Buff solar transits, which had been previously tested and all adjustments made, and approved by the General Land Office, being the highest type of instruments made in this country, and

the Assistants, all of them had had considerable previous experience on land surveys.

Q. State whether or not the survey was made according to the most modern scientific method and in the most approved manner?

A. Yes, sir, it was.

Q. Mr. Clement, I direct your attention to the property in controversy in this suit, lots eight, nine and ten of section ten, and will ask you to state whether or not, you have personally been over the land mentioned?

A. I have.

Q. Have you gone over them a number of times?

A. Very thoroughly a number of times.

Q. Was your survey of that tract actually made on the ground?

A. It was.

Q. Is it a correct survey of that land, as well as the entire area shown on the plat?

A. It is as near correct as modern surveying
196 methods can make it.

Q. I show you plat marked Plaintiff No. 12, and I will ask you to state whether or not this plat shows the points at which the photos were taken in this case, or what does it show?

A. The plat marked Plaintiff No. 12, shows the nature of the ground in question and shows the location of the camera when the pictures were taken and the direction in which the camera was facing.

Q. Mr. Clement, I will ask you to state whether or not, you are familiar with the elevation of the land in sections nine, ten, fifteen and sixteen?

A. Yes, sir.

Q. Township twenty, north, range sixteen west?

A. Yes, sir.

Q. How were the elevations ascertained?

A. The elevations on the lands in sections nine, ten, fifteen and sixteen were ascertained by a careful survey under Mr. Kidder's directions in 1913-1914.

Q. Are these elevationss hown on the plat, and if so, what plat or places?

A. The elevations are best shown on Plaintiff's Exhibit 13.

Q. Does Plaintiff's Exhibit No. 13, correct represent the elevations of the land in the sections I have mentioned?

A. To the best of my knowledge it does.

Q. State whether or not the elevations are shown on any other exhibits?

A. The elevations are shown on Plaintiff's Exhibit No. 10 and Plaintiff's Exhibit No. 12, and are identical with those shown on Plaintiff's exhibit No. 13.

Q. Were the elevations of the property in controversy, lots eight, nine and ten of section ten, actually surveyed on the ground?

Objected to by counsel for defendants on the ground and for the reason that this witness has stated that the elevations were run by Mr. Kidder in 1913-1914, and that he was not present at that time, and his testimony should be confined to what he actually did or knows himself.

Objection sustained by the Master, as Mr. Kidder's evidence would be the best on that point.

To which ruling counsel for plaintiff excepts and re reserves bill of exceptions.

197 Q. Referring to the elevation Mr. Clement, have you any personal knowledge based on a survey or observation of the retracement of the elevation, as to its being correct?

A. I have personally been over all of the ground and have run some of the levels on the ground, showing difference of elevation, I also have run the 173.09 foot contour, but not the other contours.

Q. They have been testified to by Mr. Kidder?

A. Yes, sir.

Q. You have personally been over lots eight, nine and ten, of section ten, involved in this suit?

A. Yes, sir.

Q. What is the character of the land embraced in lots eight, nine and ten of section ten?

A. The land embraced in lots eight, nine and ten of section ten, is all up land, covered with timber of up land growth, and the land is well drained, towards the southeast into Ferry Lake.

Q. Can you name, in a general way, the character of the timber growing on this land?

A. Yes, sir. The timber growth at the 173.09 foot contour consists of over cup oak and a few scattering cypress; below the 173.09 foot contour, is almost a solid growth of cypress, and as you ascend from the 173.09 foot contour you pass through the overcup oak, willow oak, red oak, up to the higher elevation where you find mostly post oak, black jack oak and pine timber.

Q. I understood you to say that this land was well drained?

A. Yes, sir, it is.

Q. In what direction is the slope of the drainage?

A. It is towards the southeast.

Q. What have you to say in reference to whether that land could be cultivated without artificial drainage?

A. It is my opinion, that if the lands were cleared of the timber and the undergrowth that it could be practically all of it cultivated without any artificial drainage.

Q. State whether or not, there are any basins, ponds or marshes on this land in suit?

A. There are not.

198 Q. Are you familiar with the lines of the fractional southwest quarter of section ten, as surveyed by A. W. Warren in 1839?

A. Yes, sir, I have retraced them a number of times.

Q. Are you satisfied that they are correctly retraced?

A. I have retraced those lines as reestablished by Mr. Kidder.

Q. What is the character of the land included by A. W. Warren in the fractional southwest quarter of section ten, township twenty north, range sixteen west?

A. It is practically the same character of the land to the west of that surveyed by Warren, which he omitted from his survey, except that there is a considerable area of land in the fractional southwest quarter of section ten, as surveyed by A. W. Warren, that is lower in elevation than any of the land, which he omitted from his survey.

Q. Do you know the area of that low portion of the fractional southwest quarter of section ten, approximately?

A. Probably five acres of the land in the fractional southwest quarter of section ten, is below the 173.09 foot contour, which Mr. Kidder and the scientific workers, working with him determined to be the mean high water elevation of Ferry Lake.

Counsel for defendants object to this witness's testimony as it is not based upon his own work, and he is deducing his conclusions from others, which work was done by Mr. Kidder and others in 1913-1914, and same is hearsay, and it is admitted that he did not run the contour lines in the so-called omitted areas.

Objection overruled by the Master, to which ruling counsel for defendants except and reserve a bill of exceptions.

Q. Mr. Clement, I will ask you whether you know where the 173.09 foot contour is, in the fractional south-west quarter of section ten?

A. Yes, sir.

Q. State whether or not, you know where the 173.09 foot contour is on the ground in the fractional south-west quarter of section ten, as surveyed by A. W. Warren?

A. I do.

Q. Upon what is your knowledge of that line
199 based?

A. My knowledge of the location of the 173.09 foot contour, within the fractional southwest quarter of section ten, as surveyed by A. W. Warren, is based upon the fact that I have personally walked along this contour, in the said area.

Q. Is the contour, in the area monumented in any way, if so how?

A. The contour in the area in question is monumented by stakes set by Mr. Kidder in 1913-1914.

Q. And you have personally walked along the contour in that area and identified it by reference to Mr. Kidder's survey, and the stakes which he set in 1913-1914?

A. I have, and by the timber growth, which makes the line very apparent.

Q. You made this map from information that you obtained?

A. I traced this map from Exhibit No. 13.

Q. Have you any knowledge that this map is now correct?

A. To my personal knowledge it is a true tracing of Plaintiff's Exhibit No. 13.

Q. It is simply illustrative?

A. Yes, sir, to bring out certain points.

Q. Do you know the area in the fractional southwest quarter of section ten, township twenty, north, range sixteen west, which is low, and below the 173.09 foot contour, as extended on the ground?

A. I know that there is such an area.

Q. In order to determine the acreage in that low territory, is it necessary for you to refer to a plat?

A. It would be necessary to refer to a plat or make a survey to determine the acreage.

Q. Can you determine the area, approximately with reference to the survey?

A. Well, from my knowledge of the facts on the ground, I would estimate between five and ten acres of land below the 173.09 foot contour.

Q. I show you sketch marked Plaintiff No .31 and I will ask you to state who made it?

A. The sketch marked Plaintiff 31 was repared by myself.

Q. Upon what data, plat or information is that sketch based?

A. The plat marked Plaintiff No. 31 is based on the data contained in Plaintiff's exhibit 13.

200 Q. State whether or not the sketch marked Plaintiff 31, is a correct reproduction of Plaintiff's exhibit No. 13 with respect to the area shown on the sketch?

A. It is.

Q. Was it made by you?

A. Yes, sir.

Q. Have you had experience as a draftsman?

A. I have.

A. And in making tracings?

A. Yes, sir.

Q. You consider yourself competent to make a sketch, and competent to make the sketch I have just shown you?

A. Yes, sir.

Q. Using Plaintiff's Exhibit No. 13 for that purpose?

A. Yes, sir.

Q. State then whether the sketch that I have shown you is a correct reproduction of the area shown thereon, based upon Plaintiff's exhibit 13?

A. The areas indicated on Plaintiff 31, are true copies of the same areas indicated on Plaintiff's Exhibit No. 13.

Q. State what the different colors on the sketch marked Plaintiff 31 represent.

A. On Plot, Plaintiff's Exhibit No. 31, as indicated on the legend on the plat, the full black line represents the Warren purported survey; the dotted black line represents the completion of the survey to the boundary, the exterior boundary of sections nine and ten; the dotted line also represents the position of the line between fractional sections fifteen and sixteen; the cross section area represents lots eight, nine and ten of section ten; I omitted to state that the dotted line also represent the subdivision of section ten and sixteen and the center line of section ten; the green line represents the 180 foot contour, as surveyed by Mr. Kidder in 1913-1914; the red line represents the 173.09 foot contour as surveyed by Mr. Kidder in 1914, a portion of which we also surveyed, that is Mr. Albert Smith, Jr., United States Surveyor and myself in 1917; the green area represents the land
201 above the 180 foot contour; the pink area represents the land lying between the 173.09 foot contour and the 180 foot contour; the brown area represents the area lying below the 173.09 foot contour; I might add that the brown area does not represent all of the land ly-

ing below, simply follows the shore line as represented by the 173.09 foot contour.

By Master:

Q. This is illustrative of the large map?
A. Yes, sir.
Q. The green is high land?
A. Yes, sir.
Q. The green is the highest land?
A. Yes, sir.
Q. The pink next?-
A. Yes, sir.
Q. And the brown below the 173.09 foot contour?
A. Yes, sir.

Counsel for plaintiff offers in evidence the plat marked Plaintiff 31 identified by the witness together with the legend thereon, being the plat which the witness states was made from the large map previously offered in evidence and known as Plaintiff 13, as certified by Arthur D. Kidder, Supervisor of Surveys.

Filed in evidence and marked exhibit No. 31.

Q. Mr. Clement, referring to plaintiff's exhibit 31, I will ask you to state whether or not, you have figured out, from this sketch that portion of the area shown in green on the map, which represents land above the 180 foot contour?

A. Yes, sir, I have figured that, with respect to the land that was omitted by the Warren survey.

Q. What are the figures that you have made on that Mr. Clement?

A. In sections, nine, ten ,fifteen and sixteen, seventy two percent of the land omitted from the Warren survey lies above the 180 foot contour, and twenty-eight per cent

lies below the 180 foot contour and above the 173.09 foot contour.

Q. State whether or not the sketch which I have shown you represents that portion of the area embraced in the fractional southwest quarter of section ten, as
202 surveyed by Warren which lies above the 180 foot contour, if so, how is it represented on the sketch?

A. The portion of the land in the fractional southwest quarter of section ten, as surveyed by Warren, lying above the 180 foot contour, as represented by the green area in the fractional southwest quarter of section ten on Plaintiff's Exhibit No. 31.

Q. How is that portion of the fractional southwest quarter of section ten, as surveyed by Warren, represented on the plat, which lies below the 180 foot contour, and above the 173.09 foot contour?

A. The land in the fractional southwest quarter of section ten as surveyed by A. W. Warren lying between the 173.09 foot contour and the 180 foot contour, is represented by the pink area, bounded by the red line of 173.09 foot contour, and the green line on the 180 foot contour.

Q. How is that portion of the land surveyed by Warren in the fractional southwest quarter of section ten, represented on the plat, the land that is below the 173.09 foot contour?

A. The area lying within the fractional southwest quarter of section ten, as surveyed by A. W. Warren, below the 173.09 foot contour, is represented as the brown area.

Q. I will ask you to state whether or not the sketch that you have made, which is marked Plaintiff 31, represents or includes the land that Warren surveyed in the fractional southwest quarter of section ten?

A. Yes, sir, it does.

Q. How is that portion represented?

A. The boundary of the land, lying in the southwest fractional quarter of section ten; included in the A. W. Warren survey, is represented by the full black line, except on the northern boundary of the fractional southwest quarter of section ten, of the land included in the A. W. Warren survey, which is represented by the dotted line.

Q. The cross section area on this plat, represents as I understand it, lots eight, nine and ten of section ten, the land in suit?

A. I so testify.

Q. What represents on this plat, the land
203 omitted by A. W. Warren in his survey, in sections ten, nine, fifteen and sixteen?

A. All of the land lying between the full black line, through the west end of section ten, which represents Warren's meander line and the red line through sections nine, ten, fifteen and sixteen represents the area omitted by A. W. Warren in his survey of section ten.

Q. What is the area of the land omitted from the A. W. Warren survey in section nine, ten, fifteen and sixteen?

A. It would be necessary for me to refer to the plat to state that. (Witness examines plat). The area omitted from the Warren survey, in sections nine, ten, fifteen and sixteen is indicated on plats marked Plaintiff 4, Plat marked Plaintiff 11, and is five hundred and three and 91-100 acres.

Q. Do lots eight, nine and ten, of section ten lie on the side forming a part of the area just mentioned as having been omitted by Warren?

A. They do.

Q. I hand you field notes marked Plaintiff "5" and I will ask you to refer to the field notes of A. W. Warren, with respect to section ten and his meander line of section ten, and will request you to state whether or not

Warren, from those field notes, states that he is following the margin of the lake?

(Witness examines field notes).

A. Warren does not state in his field notes that he is following the margin of the lake, in running the line which purports to represent the meander of the lake. I am referring to page 27 of Plaintiff's Exhibit No. 5.

Q. Are you familiar with the field notes of A. W. Warren—have you read them?

A. I have.

Q. Is there anything in the field notes with respect to section ten, that shows, except by inference, that he is following the margin of the lake?

Objected to by counsel for defendants as the field notes are the best evidence.

Objection overruled, and bill reserved.

A. On page 21 of Plaintiff's Exhibit 5, in the field notes of the line between sections ten and eleven,
204 at the 49 chains Warren says 'To the lake, set post.' On page 22 of the same exhibit in the field notes of the Warren survey, of the line between sections three and ten Warren's notes at 56 chains 'To the lake set post', on page 26, of the field notes of Warren survey, Plaintiff's exhibit 5, Warren states 'traverse front section 1, front section 24, front section 13, front section 12', and on page 27 'front of section eleven, front of section ten, etc.'

Q. What portion of Warren's field notes represents his meander line along the fractional southwest quarter of section ten?

A. The meander line along fractional southwest quarter of section ten, is represented on page 27 of Plaintiff's exhibit 5, in the paragraph headed 'Front of section ten.'.

Q. I will ask you to underscore the courses in the Warren field notes which represent the front of section ten

(Witness marks same as directed).

Q. The field notes which relate to that portion of section ten which adjoins the land in controversy will be found on page 27?

A. Yes, sir, page 27 of plaintiff's exhibit 5.

Q. Mr. Clement, as a surveyor, from your knowledge of the field notes I will ask you to state whether or not there is any call in the field notes, that you have underscored, with regard to the lake, or shows that Warren was following the margin of the lake?

A. There is no mention whatever in the field notes of the Warren survey of the line surporting to be the meander of the lake, no mention of the lake.

Q. State whether or not the courses which you have underscored on page 27, represent the peninsula of land which Warren surveyed as the fractional southwest quarter of section ten?

A. A portion of the courses and distances which I have underlined on page 27 of Plaintiff's Exhibit 5, represent the peninsula, as shown in fractional southwest quarter of section ten.

Q. From your knowledge, as a surveyor, I will ask you to state whether or not, there is anything in the field notes, of the entire Warren survey, which shows in any way, except by inference, that Warren was following the contour of the lake, or margin of the lake, or that he ran to the lake in surveying out the fractional southwest quarter of section ten?

205

A. There is absolutely nothing in the field notes of the Warren survey to indicate that he was following the lake or any body of water in fractional southwest quarter of section ten.

By Master:

Q. On the topographical map, it has the figures on the traverse of the lake, 25, 16, 15, 13, 12, 11, 10, etc., are those the calls of the field notes of the Warren survey shown by the Department?

A. No sir, the figure 25 is the number of the angle point, 17 is on the 173.09 foot contour, the figures 16, 15, 14, etc., represents the restablishment of the angle points of the Warren survey.

Q. Are those numbers your own numbers or Warren's numbers?

A. Those are our numbers.

Q. Does not the Warren field notes, purporting to make that survey and gives the numbers of his departures?

A. Warren's survey gives no numbers to the angle points, he simply gives the courses and distances. The angle points were numbered to make our record clear.

Q. But that represents the courses and distances given by the Warren field notes?

A. Yes, sir.

Q. Now in that part of his field notes, he don't refer to the shore?

A. No, sir.

By Mr. Hunter:

Q. I will ask you to state whether or not there is anything besides inference, to justify the belief that Warren was following the margin of the lake, in surveying this peninsula of land shown as the southwest fractional quarter of section ten?

A. There is nothing in the field notes to show that he was following the margin of the lake, except that we infer he was from the notation 'front of section ten.'

Q. Now, does he mention lake anywhere in connection with section ten, if so where?

A. I read in to the record his description of the line between sections ten and eleven and between sections three and four, in which he mentions 'to the lake set post.'

Q. Point out on the supplemental Topographical plat marked Plaintiff 9, the place where Warren refers to the lake?

206

(Witness marks same with the letter "A" on plat referred to).

A. Referring to Supplemental Plat of Township twenty north, range sixteen west, Plaintiff's Exhibit 9, where Warren uses the expression 'To the lake set post' on the line between sections ten and eleven, I have designated as "E", and the Warren field notes use the expression 'To the lake set post', at the point that I mark "F" on the line between section three and ten. Those are the only points where Warren, in his field notes mention the lake in connection with the survey of section ten.

Q. Does Warren call his line in connection with section ten, meander line?

A. No, sir, just traverse front of section ten.

Q. What is a traverse line?

A. A traverse line is a survey line, a broken line of different courses and distances, all courses and distances being noted on each line run, of course through water, over land or anywhere, but traverse has no reference to the topographic features, simply an irregular line.

Q. May run through high land?

A. Yes, sir.

Q. Now what is a meander line?

A. A meander line is a survey line, to represent the mean high water elevation of a body of water.

Q. I will ask you to state Mr. Clement, whether or not there is a body of water, lake or any other body of water or water course, or any evidence there along the west side of Warren's so called meander line of fractional southwest quarter of section ten?

A. There is a low depression in the fractional southwest quarter of section ten, which in rainy seasons, would drain the high land which perhaps would be termed a water course.

Q. State whether or not that depression is or is not in the land Warren surveyed in the fractional southwest quarter of section ten?

A. It is in the land that Warren surveyed in the fractional southwest quarter of section ten.

207 By Master:

Q. Does that follow throughout the courses run by Warren?

A. The so called water course or lowland in the fractional southwest quarter of section ten, crosses the Warren so called meander line and drains into the lake across the eastern boundary of fractional southwest quarter of section ten, as surveyed by Warren. It does not cross the western boundary.

Q. What I mean is this, does the so called meander line, in its entirety, follow along the shore, or follow this depression?

A. No, sir, the depression is east of that entirely.

By Mr. Hunter:

Q. Mr. Clement, please refer to Plaintiff's Exhibit 31, and mark by the letter "G" the depression which you have just mentioned in your testimony?

(Witness marks same).

Q. Mr. Clement, the Warren meander line in section ten, does not follow the depression, to which you have referred?

A. No, sir.

Q. Then state whether or not there is any lake, or water course along any portion of the so called western meander line, as run by A. W. Warren in section ten, with the exception of the depression that you have mentioned, that touches that line at one point?

A. There is no other depression or water course of any kind, along the western line, the Warren so called traverse line through the fractional southwest quarter of section ten.

Q. State, Mr. Clement, whether or not the land lying West of the Warren so called meander line of the fractional southwest quarter of section ten, is up land?

A. The land lying west of the Warren meander line of section ten, is up land in character.

Q. Is the timber growth there of the character of up land?

A. I am not a graduate ecologist but I have had a great deal of experience in surveys and in the woods and have become familiar with different kinds of timber found on different kinds of land, and there are oak, pine—

Q. There is other timber besides the oak?

A. Yes, the timber growth west of the Warren meander line is of an up land character, the character of timber that you find upon up lands.

208 Q. What is the topography of the ground, is it the character of up land or lake or low lands?

A. The topography of the land is of the character of up land, in that it is high and well drained area.

Q. Mr. Clement what have you to say with reference to whether or not the fractional southwest quarter of section ten, is or is not correct?

Same objection by counsel for defendants as heretofore, same ruling and bill of exceptions reserved.

A. Warren's survey of the fractional southwest quarter of section ten, does not correctly represent the shore line, or the mean high water elevation of Ferry Lake or James Bayou, therefore it is not a correct survey of the Lake and Bayou.

Q. State whether or not it is a correct survey of the fractional southwest quarter of section ten?

A. No, it is not a correct survey of all of the land included in the fractional southwest quarter of section ten.

Q. State whether or not, in your opinion, as a sruveyor, and from your knowledge of the land itself, that Warren committed, or did not commit a manifest error in running his line in the manner in which he did, and as represented on the plat?

A. Warren committed a manifest error in surveying section ten as represented on his plat and in his field notes.

Q. Mr. Clement, I will ask you to examine Plaintiff's Exhibit 11, and to state whether or not you calculated and noted on this plat the distance in feet from certain points to other points indicated on the lines "A" to "B", "B" to "C", to "F" to "G" to "H" to "K" and "H" to "L"?

A. I did.

Q. Now please refer to that plat and explain the distances shown on the legend.

A. The point "A" is a point on the 173.09 foot contour, on the left Bank of James Bayou, a short distance south of the south sixteenth line of section nine, directly west of the point "B", which is coincident with angle point "12" as shown on the topographical plat marked Plaintiff No. 10, and the point "12" is on the western

boundary of the Warren survey of the fractional
209 southwest quarter of section ten; point "C" is a point on the eastern boundary of the Warren survey of fractional southwest quarter of section ten directly east of the point "B"; point "D" is at the meander corner of fractional sections nine and ten, as established by Bristol in 1871; point "E" is a point near the center of the northeast quarter of section nine, on the 173.09 foot contour as established by Mr. Kidder in 1914; point "F" is coincident with angle point 15 on the Warren traverse through the fractional southwest quarter of section ten, shown on Plaintiff's Exhibit No. 10; point "G" is a point due south of the point "F" on the 173.09 foot contour; point "H" is coincident with angle point No. 13, on the Warren traverse through fractional southwest quarter of section ten, as shown on Plaintiff's Exhibit No. 10; point "K" is a point on the 173.09 foot contour, in a southwestern direction from point "H"; point "L" is on the 173.09 foot contour, due west from the point "H."

Q. Referring to Plaintiff's Exhibit 11, which I have just shown you, I will ask you to state who computed the omitted area of land, the land that was omitted by the Warren survey and shown at the left hand corner of the plat?

A. The notation showing the amount omitted was done by me, and the computations made by me.

Q. Referring again to this exhibit, please explain the illustrative profile?

A. The illustrative profile indicated on Plaintiff's Exhibit 11 were prepared by myself from data obtained by Mr. Kidder in his topographical survey of section ten, and section nine in 1914.

Q. What does the profile show?

A. The profiles were prepared to graphically illustrate the difference in the elevation of the land in the area mentioned.

Q. State whether or not Warren's meander line in section ten, I refer to the west meander line, follows the configuration of the border of Ferry Lake?

A. It does not.

Q. Does it mark the sinuosity of a body of water?

A. No, sir.

Q. State whether or not, according to your opinion as a surveyor, and from your knowledge of the running of the Warren meander line at that point, was run without reference to any body of water?

210

A. Absolutely without regard to a body of water.

Q. Mr. Clement, state whether or not, you are familiar with the southern boundary of Section Ten, I mean the Southern boundary of the land surveyed by Byron Bradley Bristol in 1871, represented on Plaintiff's Exhibit No. 4?

A. Yes, sir, I have followed along the southern boundary of the fractional section nine and ten as surveyed by Bristol represented on Plaintiff's Exhibit No. 4, which were reestablished by Mr. Kidder in 1914.

Q. State whether or not that line is monumented, if so how?

A. That line was monumented by Mr. Kidder by putting iron post bearing a brass cap suitably marked, as represented on Plaintiff's Exhibit Number Ten.

Q. You are familiar with the topography of the country along the line you have just mentioned?

A. I am.

Q. I call your attention to the resurvey plat of this township marked Plaintiff's Exhibit 8, and direct your attention to the letter "A" on the plat and I will ask you to state whether or not that letter represents one of the turning points of the Bristol Survey?

A. Yes, sir, it does, Letter "A" represents angle point No. 10 of the Bristol survey.

Q. State whether or not—what is the topography of the country at the point "A" shown on this plat?

A. At the point "A" the country is up land in character, sloping towards the south, with very large oak trees.

Q. State whether or not the Bristol meander line, or so called meander line from point "A" to point "B" and then to Point "C" on this plat represents the contour of Ferry Lake, James Bayou, on the ground?

A. The line purporting to have been surveyed by Bristol, from the point "A" to point "B" and then to point "C" does not represent the borner of James Bayou or Ferry Lake, or any water course or body of water.

Q. State whether or not there is a water course or body of water along the actual line?

211 A. No, sir, there is not.

Q. State whether or not the line "A" "B" and "C" follows the configuration or sinuosities of Ferry Lake or James Bayou?

A. The line "A" "B" "C" does not follow the sinuosities of Ferry Lake or James Bayou, or even approximate it, does not follow any contour.

Counsel for defendants object to this line of evidence as irrelevant and immaterial. That the patent upon which the defendants claim title was given to Stephen D. Pitts, predicated upon the A. W. Warren Survey, and the Bristol survey was made many years subsequent to the Warren survey on which the patent was based.

Objection overruled by the Master, and bill of exceptions reserved and the objection ruling and exception is made general to apply to all evidence of like character.

Q. Mr. Clement, state whether or not you have followed the Bristol meander line from point "A" to point "C", the so called line?

A. Yes, sir, I have followed the Bristol line from point "A" to point "C."

Q. Please state the character of the timber growth on the line from point "A" to point "C"?

A. The timber growth on the line from "A" to "C" is distinctly up land timber, being composed mostly of Post Oak, black jack oak, hickory and pine.

Q. I will ask you to state whether or not, if the line from "A" to "C" purports to represent a meander line of Ferry Lake, whether or not it is a correct meander line of Ferry Lake or James Bayou?

A. No, it is not a correct meander line of Ferry Lake or James Bayou.

Q. Why is it not?

A. It fails to follow the contour. It does not run parallel to or even approximate the contour. It cuts across high land, over high bluffs, far above the contour representing mean high water elevation.

Q. From your knowledge of surveys and of the land, will you or not say, that it was run without regard to contour?

A. Yes, sir, no regard to contour.

Q. Are you familiar with the field notes of the Bristol survey?

A. I have read the field notes of the Bristol survey.

Q. I will ask you to examine Plaintiff's exhibit 5 and to state in what portion of that exhibit are the

212 Bristol field notes to be found?

A. The Bristol field notes will be found on pages 44, 45, 46 and 47 of Plaintiff's Exhibit No. 5.

Q. Please refer to that portion of the field notes, which purports to represent the running of the line along the front of James Bayou and state on what page they will be found?

A. On page forty-six we have the Bristol field notes, headed 'Meanders of the left bank of James Bayou. Begin

at the corner between fractional sections nine and four, thence down through section four and further along they intersect the corner of fractional sections four and nine, thence in section nine.'

Q. Can you identify from the field notes the point marked "A" on the resurvey plat marked Plaintiff 8.

A. The point "A" on the resurvey plat marked Plaintiff 8, is represented on page 47 of Plaintiff's Exhibit 5, as Point No. 11.

Q. Is that the point where Bristol turned away from the lake?

A. Yes, sir. That is the first course leaning away from the lake.

Q. Please state whether or not there is anything in the field notes which you have just mentioned, in the front of James Bayou, showing that in running the line from point "A" to point "C" Bristol was following the lake, or had run into the Lake and that the line was run along the margin of the Lake?

A. The heading of these field notes "Meanders of the left bank of James Bayou' has reference to the fact he was running along the lake or along James Bayou. At the end of his field notes of the meander line of sections four and nine, he has a notation in his field notes "Land on front of Lake good, on the back slough, thin and poor."

Q. Mr. Clement, where does Bristol represent James Bayou to be, on his plat, marked Plaintiff 4?

A. Plaintiff's exhibit 4, would indicate that James Bayou was along the west side of the survey delineated by the plat of the Bristol survey?

Q. Where does Bristol represent the lake to be on his plat?

A. The open lake is represented to be southwest of the land included in this survey. The letters 'open lake' is southwest. The delineation of the plat, without refer-

ence to the figures, would show 'open water' along
213 the entire sounthern boundary, that is the inference.

Q. State whether or not there is anything in the field notes of Bristol, showing positively that he was following the margin of the lake in running that south line?

A. As I previously testified, the field notes of the Bristol survey mentions 'Meanders of the left bank of James Bayou.'

Q. Do the field notes mention the meander of Ferry Lake?

A. No, sir, that is the only mention of meander.

Q. James Bayou lies in what direction from the land surveyed by Bristol?

A. James Bayou lies west of the land surveyed by Bristol.

Q. How does the lake lie, with reference to the land surveyed by Bristol?

A. The lake lies about three-quarters of a mile south of the land surveyed by Bristol.

Q. State whether or not there is anything in the field notes, besides inference, to show that he was meandering the lake in running the line from "A" to "C"?

A. No, sir, there is nothing in the field notes to indicate he was meandering Ferry Lake.

Q. I will ask you to state whether or not Bristol at the point "C" on the resurvey plat, represents that he joins the Warren line?

A. The resurvey plat, Plaintiff's Exhibit 8, indicates that the Bristol line, Southern boundary of fractional sections nine and ten, joins the Warren traverse line, along Warren's western boundary of fractional section ten, at angle point No. 2, of the Warren traverse line.

Q. Mr. Clement, can you refer to the field notes of Bristol and show what he says in regard to his joining these two lines?

A. Yes, sir, on page forty-seven of Plaintiff's exhibit No. 5, reading from the official record of the Bristol Survey, from the meander corner of fractional sections nine and ten, have have '1 N. 30 E. 9.30 at 5.29 road; 2 N. 78 E. 30.00 at 17.84 road'. Referring to the plat of the resurvey of township twenty, north of range sixteen west, plaintiff's Exhibit 8, would indicate that at the end of the last mentioned course he intersects the Warren survey, at angle point number two.

Q. State whether or not there is anything in
214 Bristol's field notes to show or intimate, in order to intersect the Warren line at the point "C" that was necessary from Bristol to cross any stream or water course?

A. There is not indication at all.

Q. State whether or not, the lake is visible from the point "B"?

A. It is not.

Q. How far is it from the point "B" to Ferry Lake?

A. The exact distance from point "B", in a due southern direction to Ferry Lake is fifty-two chains and eight links.

Q. What is that distance in feet?

A. That distance in feet is thirty-four hundred and thirty-seven and 28-100 feet.

By Master:

Q. A little over half a mile?

A. Yes, sir, about three-quarters of a mile, forty chains is half a mile.

By Mr. Hunter:

Q. Mr. Clement, referring to line "A" to "C", on the resurvey plat marked Plaintiff 8, I will ask you to state whether, if that line was intended or purports to repre-

sent the meander line of Ferry Lake, it is correct or incorrect, meander line?

A. It is an incorrect meander line of Ferry Lake.

Q. If the surveyor intended to survey that line as a meander line of Ferry Lake, did he or not err in the way he run it?

A. He erred, he established it incorrect.

Q. Mr. Clement, from your knowledge of the land, and your knowledge as a surveyor, state whether or not the error committed was or was not a manifest error?

A. It was a manifest error.

Q. Mr. Clement, did you make any surveys in the sunk lands of Arkansas, embraced in the suit of Wilson and Company, case of United States vs. Wilson and Company?

A. Yes, sir.

Q. Was that the suit that was tried before Judge Treber, United States Judge?

215 A. The so called Moon lake cases I personally ran all of the lines in the survey of the so called Moon lake, and testified in the hearing before Judge Treber.

Q. What was the character of the land indicated by that survey of the moon lake?

A. It was land in place at the time of the original survey, at the same time the adjoining area was surveyed.

Q. How did that land compare in topography and timber growth with the land involved in this case?

A. In timber growth it was somewhat similar, except it was land nearer the water table, so that the timber was more of the character that you find on low land and the top of the land was more nearly level than the land in question in lots eight, nine and ten of section ten. The character of all of the land in the vicinity was of a flat nature.

Q. In the moon lake case?
A. Yes, sir.

On Cross Examination, he said:

By Mr. Smith:

Q. Mr. Clement, the Arkansas case, had to do with reappearing of submerged land, did it not?

A. The lands involved in the Moon lake cases were sunken at the time of the earthquake in 1811 and 1812, but previous to that they were returned to have been covered with a growth of a high land timber, and after the submergence a new forest came up.

Q. That case went off on the theory that the land had reappeared?

A. I cannot state as to that.

Q. In that Lew Wilson case, I believe that is one of the first cases decided, so largely upon scientific research?

A. To my personal knowledge, otherwise I cannot state.

Q. I will ask you, in 1839, when Deputy United States Surveyor A. W. Warren went into Township Twenty North, Range Sixteen west, did the surveyors on those days have the magnificent equipment that they have in this day and time?

216 A. No, they did not have as good surveying instruments probably as we have today.

Q. Did they not run the most of their lines with an open sight compass?

A. Probably had compass, I do not know whether sight or not.

Q. I believe that you had the records showing that Mr. Kidder made observations on Polaris, the North Star, he used for latitude?

A. Yes, sir.

Q. Was that connected with the surveys in 1839?

A. At that time they were supposed to be able to make observations on Polaris to determine the true meridian.

Q. Do you find in any of the notes, where they tell where they did such a thing in the survey of Township twenty, north, range sixteen west?

A. No.

Q. You have seen the notes?

A. Yes, sir.

Q. You find no such memorandum of their having done that?

A. No, sir, I have not found any such meomrandum.

Q. Now, Mr. Clement, I will ask you to look at page 26, and if you do not notice the heading 'Traverse-Front of Section One'?

A. Referring to Plaintiff's Exhibit No. 5, page 26, such a heading appears.

Q. Now, if section one was a complete, full section, standard section, there could not be any 'front of section one'?

A. Not correctly surveyed.

Q. I will ask you, if section twenty-four is not bounded by water course?

A. It is.

Q. Is section thirteen likewise thirteen?

A. Yes, sir.

Q. What about twelve?

A. This fronts on Ferry Lake.

Q. What about section eleven?

A. The same is true.

Q. And section ten?

A. Same is reported the same way.

217 Q. Section three?

A. Likewise.

Q. So that when Warren refers to the traverse in front of these sections, could he mean anything else, but that they were fractional sections bounded by a water course?

A. The inference was that they were bounded by water.

Q. Don't the inference give way to the absolutely conclusion, or presumption, that he must have been following a water course, because they were fractional sections?

A. No. The inference is that he surveyed the land bordering on the Lake, that is the inference we have.

Q. Now don't you justify your resurvey largely, where you checked with him, on some calls around the water course?

A. It was necessary to reestablish his survey where it was.

Q. Didn't you justify your survey largely—didn't you testify that your survey largely followed his meander courses around the lake as set forth in his field notes?

A. I do not understand how you mean justify out survey. We reestablished. Mr. Kidder reestablished the Warren surveys, as reported in his field notes.

Q. Didn't you hear Mr. Kidder testify that he took some of these traverse corners of Warren, that they fell practically together?

A. Practically followed the contour.

Q. Now, didn't he cite some ten or twelve instances to show where Warren ran very nearly a correct course?

A. In certain sections he ran along the contour, later developed to be the 173.09 foot contour.

Q. You used these field notes?

A. Yes, sir.

Q. The ones under these headings 'Traverse, front of Sections One, Twenty-four, Thirteen, etc.'?

A. Yes, sir.

Q. Now then, I will ask you, if Bristol in Section Nine, does not meander the Western boundary of Sec-

tion nine, bordering on James Bayou, practically the same as Kidder does?

A. Practically the same, that is from the meander corner of sections four and nine to the point "A"
218 or angle point number ten, on the resurvey plat marked Plaintiff 8.

Q. I will ask you if Mr. Kidder does not comment upon how remarkably close the Bristol meander of James Bayou followed the contour?

A. He stated it practically coincided.

Q. That would indicate it was correctly established along James Bayou by Bristol?

A. As far as the point marked "A" on Plaintiff's Exhibit No. 8.

Q. Now, I believe that you stated in the Bristol survey, that there was nothing said there about Lake, said it was practically not mentioned?

A. Not Lake, he mentions James Bayou, he said in the field notes that he meander James Bayou.

Q. I will ask you, if at the foot of his field notes on page 47 of Plaintiff's Exhibit No. 5, if you do not find where he said 'The slough or water course near the original traverse in front of section ten is now dry and can only be traced by the rotten drift wood.'

A. He so stated.

Q. That could only refer to the land in dispute?

A. No, sir. I think Bristol had no mention of that land whatever?

Q. But that is just a deduction?

A. It is my opinion as a surveyor, in interpreting his notes.

Q. I will ask you to examine the Warren field notes, as shown on Exhibit Plaintiff 3, and I will ask you if there is any section nine shown on the Warren map at all?

A. There is no section nine shown on the map of the Warren survey, Plaintiff's Exhibit Three.

Q. Where you have shown, or Mr. Kidder has shown section nine, by Warren is shown to be a water course altogether?

A. It is.

Q. I believe in the Bristol survey that he shows a small fraction of section nine?

A. Referring to Plaintiff's Exhibit No. 4, the plat of the Bristol survey, he shows a area of one hundred and seventy-nine and 6-10 acres in section nine.

Q. And the full completement of section nine, you all conceive is shown by the Kidder survey?

A. Of the land above the mean high water
219 elevation in 1839 and 1812.

Q. Did you have occasion to go over the work of Bristol?

A. I have followed along the lines surveyed by Bristol.

Q. As a rule you found his work to be accurate?

A. Yes, sir.

Q. I will ask you to examine his survey, Plaintiff 4, and I will ask you if he don't show quite an area marked overflowed in section nine?

A. He shows quite a little area marked overflowed.

Q. You state as a rule his work was found to be accurate?

A. Yes.

Q. Now showing you Plaintiff's Exhibit No. 31, I will ask you to compute and state just what the area of the fractional southwest quarter of section ten, is above the 180 foot level, as shown by your green on that map?

A. I have previously computed the area of the fractional southwest quarter of section ten, as purporting to have been surveyed by Warren, and the total area, above

the 180 foot contour, as established by Mr. Kidder is nineteen and nine tenths acres.

Q. And how much above the 173.09 foot contour?

A. I have not computed that.

Q. Can you approximate it?

A. Yes, sir, I think so, I would approximate that there was between the 173.09 foot contour and the 180 foot contour, that there is approximately twenty acres of land lying between the 173.09 and the 180 foot contour in the fractional south west quarter of section ten, as reported to have been surveyed by Warren.

Q. That is shown in pink?

A. Yes, sir.

Q. How many acres did you show in the fractional southwest quarter of section ten patented to Pitts was below the 173.09 foot contour?

A. I cannot refer to the patent, I can refer only to the fractional southwest quarter, and there is about eight acres of land in the fractional southwest quarter of section ten, purported to have been surveyed by Warren, which is below the 173.09 foot contour.

Q. What is the total area?

A. The total area is one hundred and forty-
220 nine and a fraction acres.

Q. The reason that you give that as forty-nine and a half acres is because your contention is there is a little neck of land extending up in the northwest quarter of section ten?

A. This was described as lot number four on Plaintiff's exhibit 7 on map prepared by the Surveyor General's office at New Orleans, May 29th, 1896, which states 'The above diagram of section ten, township twenty north range sixteen west, north western district, Louisiana, has been prepared in accordance with Commissioner's letter, Division "E", dated May 20th, 1896, and is hereby

approved' for the purpose of giving lot numbers to fractional section ten, though they were not given numbers on the plat of the Warren survey.

Q. That was subsequent to the patent?

A. I have no knowledge of the patent.

Q. Exhibit Plaintiff No. 7 was made subsequent to the patent—the patent was issued in 1860, now this map was made subsequent to that date?

A. Yes, sir.

Q. I believe that it refers to the Warren Survey and the Bristol survey?

A. There is a note that says 'A. W. Warren, Deputy Surveyor surveyed the northeast quarter of this section and lots three, four and five in 1839 with a variation of eight degrees forty-five minutes east. Byron Bradley Bristol, Deputy Surveyor, surveyed lots one and Two in 1871 with a variation of eight degrees twelve minutes east?'

Q. Your contentions is that there is a point of the original Warren Survey that runs into the North half of section ten?

A. Yes, sir, and he has it as within the fractional southwest quarter.

Q. On the Warren map, the fractional southwest quarter is shown to contain fifty-five and 88-100 acres?

A. I would not call that the fractional southwest quarter, it appears as land lying north of the east and west center line of section ten.

Q. Mr. Clement, I will now ask you to examine Plaintiff's Exhibit No. 31 and I will ask you if Warren reached the point "H", with the flood level at 180 foot contour, if he would not have looked across submerged land to an island directly south of it?

A. Under the conditions stated, he would,
221 practically south.

Q. I will ask you, looking west from the point "H", would he not have seen a wide expanse of water?

A. No, sir, would have seen a narrow expanse of water and high land.

Q. Looking southwest he would have seen a wide expanse of water?

A. Looking southwest he would have seen a wide expanse of water.

Q. If he was there with the flood level at 180 feet, would he not have been justified in making the same remark that Williamson Jones made, that the land was hardly worth traversing?

A. I am not familiar with the remark of Williamson Jones. I do not know what he would have said under those circumstances.

Q. Well, if the water practically submerged the land and there was an island in it in 1839, I will ask you if that land could have had very much value, at that time?

A. It is probably, as agricultural land in 1839, would not have been very valuable.

On Re-Direct Examination, he said:

By Mr. Hunter:

Q. Mr. Clement, you were asked relative to what conditions Warren would have found on the land lying at the point "H" when the water was at an elevation of 180 feet. I will ask you to state what effect on the Warren survey as it is portrayed in his notes and plat, with the water elevation at 180 feet, would have had with respect to the land he did survey in the fractional southwest quarter of section ten.

A. If the water had been at an elevation of 180 feet at the time of the Warren survey, at the point "H" as noted on Plaintiff's Exhibit 31, he would have been prac-

tically at the waters edge. From that point, following the record contained in the field notes and delineated on the plat of the Warren survey, he would have run in a southerly direction, as shown by levels correctly run on the ground in 1914, he would have gone through water about twelve feet deep for a distance of nearly a quarter of a mile, then he would have gone up on land of the same elevation as is shown at Point "H" across a narrow strip of land and following a northwesterly direction have gone into water for a distance of a few chains then
222 turned his line north he would have gone into water seven feet in depth and travelled in a northerly direction and finally coming out of the water at a point practically west of the Point "H", and separated from it about ten chains, had the water been at the 180 foot elevation.

Q. You have traced on the plat the conditions under which the Warren line would have been run at an elevation of one hundred and eighty feet, now I will ask you to mark on the plat the direction and courses you have followed in making your statement?

A. I will mark point "I" as the point where Warren would have finally come out of the water, had he followed his traverse courses through the southwest fractional quarter of section ten, with the water at an elevation of 180 feet.

Q. So that with the water at an elevation of 180 feet, Warren's line from point "H", would have pursued the course you have mentioned and would have come out of the water, after crossing the island, in the lower portion of the tract and emerged from the water at the point that you have marked "I?"

A. Yes, sir.

Q. If the water had been at an elevation of one hundred and eighty feet, when Warren made his survey, would

he or not have included as land what he shows on his plat?

A. If the water had been at an elevation of 180 feet, there is a considerable area shown as land in the plat of the Warren survey, which would have been submerged by the water, varying in depth up to twelve feet.

Q. If Warren had run his meander line around section ten, at an elevation of 173.09, would be or not have included the land in controversy in this suit, in his survey?

A. If Warren had run his meander line around the fractional section ten, the 173.09 elevation he would have included all the land involved in this controversy.

Q. Would he not, in that event, have included all of the land shown in the Kidder Survey to have been omitted by Warren?

A. He would.

Q. If the elevation of the mean high water elevation had been at 166 feet in 1839, when Warren made his survey, and if he had followed that elevation, in running his meander line, would be not have included all of
223 the land, and even more land than that shown by Mr. Kidder to have ben omitted?

A. He would have included considerable more land.

On re-cross examination, he said:

By Mr. Smith:

Q. Mr. Clement, I will ask you, if Mr. Kidder's survey shows where the water bites into the peninsula, that is below the 173.09 foot contour, I am referring to Plaintiff's Exhibit No. 9?

A. Plaintiff's Exhibit 9, showing the Supplemental Plat of Township Twenty North, Range Sixteen West, does not indicate any topographic features in any of the

area. This plat simply delineates the lines run on the ground.

Q. I will ask you, if you in computing the omitted area in Township Twenty North, Range Sixteen west, you deducted the seven or eight acres marked "G" on Plaintiff's Exhibit No. 31?

A. I do not quite understand your question.

Q. Did you eliminate this as low land?

A. The area marked "G" on Plaintiff's Exhibit 31, is included in the fractional southwest quarter of section ten, as purporting to have been surveyed by Warren and is not included in the extension survey in 1916-1917.

Q. Is it really below the 173.09 foot contour?

A. That land is below the 173.09 foot contour, but we were not, under our instructions, in perfecting the extension survey, we were not to include any land previously survey. This area had been surveyed, and I believe had gone to patent.

Q. You did in this township take out submerged areas below the 173.09 foot contour and deduct that from your survey?

A. We had no authority to take out any land omitted. The land patented was deducted, the Government has no interest in the patented area.

224 DR. HENRY C. COWLES, a witness for the Plaintiff, being first duly sworn, testified as follows:

On Direct Examination he said:

By Mr. Hunter:

Q. Dr. Cowles, where do you live?

A. Chicago, Illinois.

219

Q. What is your occupation or profession?

A. I am professor of Plant Ecology in the University of Chicago.

Q. How long have you held that position?

A. I have been on the Staff of the University since 1898. I have not all of that time been Professor of Ecology. I have been there twenty years.

Q. You have been there twenty years and engaged in Ecologic work?

A. Yes.

Q. During that period of twenty years?

A. Yes, sir.

Q. Did you have any training in Ecology?

A. Yes, sir, I had a college course at Oberlin, Ohio, and received Batchelors degree in 1893, and during that course took work in a preparatory way for Ecology in Botany and Geology and followed that with the University of Chicago where I received the degree in Ecology in 1898. In the meantime I taught a year in Nebraska. In the summer of 1895 in the United States Geologic survey I carried on certain Ecologic work, and since 1898 have devoted practically my entire time to teaching Ecology, all over the United States and other countries.

Q. What other countries have you done any Ecologic work?

A. Canada, Ontario, British Columbia, Belgium, Holland, Italy, England and Germany.

Q. Now, what did you teach in Nebraska?

A. That was in the Gates College, and I taught most of the sciences there, I occupied the position of City Scientist there, special work.

Q. What work?

A. Botany and Geology.

Q. Did you receive a degree in college?

A. Yes, sir, in 1898, University of Chicago, received their degree in Ecology and made special studies
225 of the sands of Lake Michigan and in Indiana and Wisconsin.

Q. Have you not had considerable experience in Ecology?

A. I have had, what I consider quite a considerable amount of experience.

Q. Detail it in a general way?

A. I have carried on special work and have visited European countries; have visited Colorado and the New England states, Maine, Massachusetts, New York, especially along the coast of Land Island in 1900; in Florida three times, in 1904 and 1908 and another year; in Tennessee in 1900; in South Mississippi in 1903, in the sunken lands of Arkansas and Missouri at various times, first in 1899 and 1901, and a great many times from 1912 to the present time and in Louisiana, that is on Ferry Lake in 1914, that was when I made my first visit, and more recently in 1917, in connection with the present visit; in the Western States was in Nebraska the years 1894, 1895, Arizona in 1903, California that same year and in 1913 for a long period and in 1916 and 1917; in Montana in 1901, and Washington since then and in 1907 and 1913.

Q. You refer to the sunk lands of Arkansas, I will ask you to state whether or not you testified as an ecologist in the case of the Government, in the trial of the case of the United States vs. Lee Wilson & Co., involved in the so called Moon lake?

A. Yes, sir, I testified in those cases.

Q. State whether or not you visited Ferry Lake in Township Twenty North of Range Sixteen West in the year 1914?

A. Yes, sir, I did.

Q. What was the purpose of your visit?

A. It was to find out the general Ecologic conditions around Ferry Lake, with a view to seeing whether, as I remember whether certain areas could be taken up by the Land Department and suit entered for the recovery by the Government.

Q. What areas were they?

A. The lake itself was involved, and also certain adjacent land omitted from surveys.

Q. Did you have occasion at a later time to visit Ferry Lake, this particular Township to make an ecologic study?

A. Yes, sir.

Q. When was this ecologic study made?

226 A. December of last year, 1917.

Q. How much time did you spend on Ferry Lake in 1914?

A. I could not tell exactly without referring to my note book, but approximately a week.

Q. In 1917, how much time did you spend in your examination?

A. Five days, as I remember, four or five days.

Q. Doctor, what is Ecology?

A. Ecology is the science which endeavors to ascertain what plants grow under different circumstances, and their growth thereafter. It is a subject that is very ancient, dating back to the beginning almost of human experience. It is an endeavor to find out what particular crops grow on certain kinds of land. That is why I took up the work, was from my experience on the farm, I learned that celery would grow on certain land and not on other adjoining land. If we wanted an early crop of tomatoes we would select a particular place. Those questions interested me and I made up my mind to try to go to the bottom of nature, for native vegetation and timber, so as to answer certain questions that came to me as a farm boy, and af-

ter taking up the study, as to what grows in various places I found that as a result of those studies that each particular plant, whether tree or herb, has its own peculiar conditions of life, own particular soil, own particular climate, own particular relation to other trees and plants, and to find out what those conditions are and why it is why I understood these studies, in attempting to explain why plants grow where they do, cultivated plants or native plants.

Q. I will ask you to state whether or not the principles of Ecology are new?

A. They date back into the remote past. The name Ecology is about half a century old, first used in 1866, but the subject of ecology goes back to say Adams time, when they first began to grow crops.

Q. Do you know the definition of Ecology?

A. It comes from two character Ercos, meaning household and lagos meaning science. It is not very clear why the word ecology is used. But you have plant Ecology, the science of plant house keeping, the relation of plants and their environments, that might be called the science of plant house keeping.

Q. As applied to nature and the growth of
227 trees and plants it is natures book of housekeeping?

A. Yes, that is the idea.

Q. What have you to say, with reference to the length of time Ecology has existed as an organized science?

A. That is rather difficult to assert. The name, as I have stated were used in 1866. The first important work along modern lines was 1836, but the recognition of the world wide recognition of the subject, as a dignified subject, having the same place as Geology and Botany, is a matter of about a quarter of a century, until about 1895 there came an epoch making work that practically put

it on a footing as a dignified science. The science began to be recognized as far back as 1836.

Q. Insofar as applying the principles are concerned, through Ecology, as a permanent science, as applied in its work, has it reached its results through new principles or old principles?

A. In a sense the principles are old, but have been put in a new form.

Q. I will ask you to state whether or not the plant or tree is a witness of its environments as to soil conditions and conditions that existed when it germinated?

A. Yes, sir, very precise witness.

Q. If you find a large tree growing upon particular land, can you as an Ecologist identify the tree and state the conditions under which the tree germinated and the conditions as to soil?

A. Yes, sir, in practically all cases.

Q. Can you state whether or not a given tree, on particular land germinated on soil covered with water at the time that it germinated?

A. Yes, sir.

Q. Can you state, if you find a tract of land covered by trees of a certain type, and ages, can you as an Ecologist determine with exactness whether or not at the time those trees germinated the land upon which they are growing was covered with water or not?

A. Yes, sir, with precission.

Q. Can it or not be determined with exactness and precission?

A. Yes, sir, practically mathematically demonstrated.

Q. State whether or not the deductions and results of Ecology are in any sense speculative or uncer-

228 tain?

A. They are not, as solid as mathematical conclusions.

Q. Can you in a general way state why the results determined by ecology are exact and precise?

A. Well, because we find from our studies that any given plant can germinate only under particular conditions, and it can grow only under particular conditions, and on that account and it is for that reason precise.

Q. You stated that you did some ecological work in the Moon Lake case?

A. Yes, sir.

Q. I will ask you how the area involved in that case, compared as to timber growth, with the lands around Ferry Lake, which were omitted from the previous surveys?

Objected to by counsel for defendants as irrelevant and inadmissible, and that was a matter between third parties and has nothing to do with the issues in this case.

Objection overruled and bill of exceptions reserved and the objection, ruling and exception are made general to apply to all evidence of like character?

A. The cases are different in a great many respects. The Moon Lake case, which was typical of other cases. In that case the land in suit, the line between that land and the adjoining patented land was very difficult to trace, the timber on both the so called lake and patented lands being about the same, while in the Ferry Lake case the contract is very strong, in the timber as now exists and believe to have existed at the time of the Warren survey and the condition of the land omitted by Warren, as it was up land and a very sharp contrast with the lake vegetation, and the great contrast did not exist in the Arkansas cases.

Q. Was the timber growth involved in the Moon Lake case, of the character of hill land, up land?

A. It was the character of river bottom flood plain, both in the lake and on the surveyed land, oak, hackberry and many kinds of trees red run. This, of course, the Ferry Lake situation, is not the same as the con-
229 trast between the vegetation of the lake and the up land is very sharp.

Q. Now, you are a Geologist?

A. Not professionally, I have studied it somewhat.

Q. Are you familiar enough with topographic conditions of the area involved, to state whether or not those topographical conditions are different from those involved in Moon lake cases, that is from the omitted area in the Ferry Lake?

A. Yes, sir, quite different. Moon lake involved ordinary river bottom or floot plane, which were quite the same as the patented land. In the Ferry Lake region we have a lake formation, and surrounded by the hills, which are very high, never covered by overflow water during many hundreds of years. That is to say we have in Ferry Lake, well defined up land, and in Arkansas we have no sharp up lands contrasting with the low lands, running up to same.

Q. I understood you to say a while ago that the Moon Lake cases were not as strong as to the facts, as the Ferry Lake, and that the area in the Ferry Lake is of an up land character?

A. That is true, Moon Lake, while certainly not lake in the immediate past, the supposition was of their having been a lake there is weaker than the Ferry Lake, which never could have been lake lands at all.

Objected to by counsel for defendants as matter of opinion.

Objection overruled and bill of exceptions reserved.

Q. Doctor, you stated that you visited Ferry Lake in 1914?

A. Yes, sir.

Q. I want to ask you whether or not you made any Ecological studies at that time, along the border of Ferry Lake?

A. Yes, sir, I devoted all of my time to Ecological studies around Ferry Lake.

Q. Do you know what portions of the lake you visited in 1914?

A. Yes, sir, I visited all of the portions, practically all lying within the State of Louisiana. We walked on the Texas line, and on the south side, around the south end of the lake, up the east end, and James Bayou. I think that I visited the lake in Township twenty
230 on the north, east and south sides of the lake.

Q. Was Mr. Kidder at the time engaged in his survey of the land?

A. Yes, sir.

Q. You met him on the ground?

A. Yes, sir.

Q. Did you at that time examine any of the area said to have been omitted from the Warren survey?

A. Yes, sir.

Q. Do you remember what portion of this area you examined?

A. I remember particularly the one that the Jeems Bayou Fishing and Hunting Club, is situated on; that is the one that I spent most of my time on, I also went on Section Nine, ten, Fifteen and Sixteen, I also visited the land in suit in section thirteen, and I remember also the one in section on the south side of section twenty seven. I remember distinctly the one in twenty-seven, the Green tract, and Section thirteen, and the tract that lies in sections nine, fifteen and sixteen, and one in Fourralso.

Q. Are you familiar with the tract of land involved in this suit?

A. Yes, sir.

Q. State whether or not you made an ecological examination of it in December, 1917?

A. I did.

Q. Now, I want to return again to the examination that you made in 1914, state whether or not the examination you made in 1914, embraced in whole, or in part the area included in this suit?

A. I think it certainly embraced and included the area involved in this suit, I think some in the north—I remember at that time studying on that in the southern part of that involved in this suit, a large part of the so called Bristol survey.

Q. What timber growth did you find on the land omitted in sections nine, ten, fifteen and sixteen, when you made your examination in 1914?

A. I found different kinds, for specific elevations, the different levels above Ferry Lake. On the flat high lands I found, above the 180 foot contour, Post Oak, Pine particularly and some scattering other trees, and on the slopes below the 180 foot contour I found willow oak, red gun, and getting down to the 173.09 foot contour to the Lake was mostly cypress, with some young willows, overcup.

231 Three distinct types of forest growth. The types of the present lake shore were mostly cypress, and from 173.09 to 180 foot contour willow oak, red gum, and on the up lands Post oak, pine and black jack.

Q. In 1914, when you examined this land, did you make any investigation to determine, from the tree growth where the mean high water elevation mark was in 1812. when Louisiana was admitted to the Union?

A. Yes, sir, that is the chief reason I was there, that was the chief study at that time.

Q. Are you familiar with the line as established on the ground by Mr. Arthur D. Kidder, Supervisor of Surveys, which restablished the mean high water elevation of Ferry Lake, as it existed in 1812?

A. Yes.

Q. With respect to this land?

A. Yes.

Q. State whether or not you have ever followed that 173.09 foot contour, whether it has ever been shown to you as established by Mr. Kidder?

A. Yes, sir, I followed all around the whole course of the lake in 1914, around the entire eastern part of the lake, and in this visit in 1917 I followed it on the portion of land in suit, included in this suit, that we are now trying. I followed that line around, independently of any posts.

Q. Did you come to any conclusion, from your investigation in 1914 as to the position, from the timber growth, of the mean high water mark of 1812?

A. Yes, sir, it is very sharply marked.

Q. How is it marked?

A. It is marked in two ways, one by the change in the tree growth and partly by the wave action at that line. The roots of the trees are exposed, showing severe wave action at that level, also the change in the growth of the timber, cypress below, willow oak, and red gun above.

Q. State whether or not the line of demarkation between the cypress and willow oak and overcup, shows a sharp distinction, it is easily seen?

A. Yes, sir.

Q. Is there any difficulty in picking up that line of demarkation?

A. No, sir, one can pick it up as fast as one can walk along.

Q. Is it not apparent to anyone that examines the land, that there is a sharp line of demarkation between the timber growing along?

232 A. Yes, sir, looking at the trees on the line indicated, are of one nature below that 173.09 foot contour, there are some young trees under forty years of age of overcup oak and red gun, that come in since the recission of the water below that 173.09 contour.

Q. Did you in 1914 make any investigation to determine the age of the trees, that grew on the 173.09 foot contour?

A. Yes, sir, I counted quite a number of rings of trees recently felled.

Q. At that time, did you find any trees that existed back beyond 1812 in age?

A. Yes, sir.

Q. What did the presence of those trees on the 173.09 foot contour prove, according to the science of Ecology?

A. It proved that that was the lake level for a number of years—I was not able to satisfy myself exactly when that lake level began and in the report that I made I concluded that the lake was about the 173.09 contour in the latter part of the eighteenth century and remained there until about 1871. I think that the historical evidence of 1871 coincides with the tree evidence, the age of the trees, and the up land trees below that line have come since 1871, trees like red gun, overcup oak, that are below the 173.09 foot contour are all young trees.

Q. Without reference to the raft and its effect, did you find any ecological evidence on the 173.09 foot contour, as established by Mr. Kidder in 1914, showing that that contour was the limit of the mean high water of Ferry Lake as far back as 1812?

A. Yes, sir.

Q. You counted the rings of trees that had been felled?

A. Yes, sir, both above and below that line and on it.

Q. In a general way what trees did you count, what character or type of trees?

A. I counted the rings of cypress below that level, counted the rings of overcup, oaks and willow oaks, red gum above that level.

Q. What age trees did you find, showing that they generated there under certain water conditions, what were the old trees that you found, do you remember?

A. The only old trees below the 173.09 foot contour was the cypress and those ran up to over one hundred years old, and the other trees than the cypress were all young trees, none over fifty years old, and I think very few at that, below the 173.09 foot contour.

233

Q. You make the age count on trees or stumps, that grew along the contour?

A. Yes, sir.

Q. Did you find any very old trees?

A. Not immediately on the contour, but a little above the contour I found several overcup oaks, willow oaks and red gum, old trees dating back to the early part of the nineteenth century.

Q. Dating back as far as 1800?

A. Yes sir, in some cases.

Q. What are the characteristics of the overcup oak, with respect to whether it will germinate in water or stand water?

A. It will not germinate in water, even cypress will not germinate in water. Cypress however will stand water indefinitely, but the overcup oak will only stand a moderate amount of submergence some weeks in the Spring, but will not germinate under water, nor will they grow where the water is permanent.

Q. Does the same statement apply to the red gum and willow oak?

A. Yes, sir, they will not stand permanent water.

Q. In 1914, when you visited the land in controversy, were you representing the Government?

A. No, sir, I was here in the interest of private individuals.

Q. You were representing private individuals?

A. Yes, sir.

Q. Who were those?

A. I was working for Mr. Fullier, a lawyer representing Mr. Kelly and another man, I do not remember his name, King I believe.

Q. Do you know whether or not they had filed mineral locations on the land covered by the waters of the lake?

A. I was told that they had.

Q. In 1917, did you, at the request of the Department of Justice, represented by me, make an examination of the land in controversy?

A. I did.

Q. Who accompanied you to the land in suit at that time?

A. I was accompanied by Mr. Arthur D. Kidder, who identified the location and also by Mr. Thompson, yourself and a representative of the Army, there being a strike on, it was necessary to have a military accompanyment?

234 Q. Was the area, according to your understanding under military control?

A. Yes, sir. I was accompanied also by Mr. Janes, of the Ecological Department.

Q. Who pointed out to you the lines of the land in suit?

A. Mr. Arthur D. Kidder, Supervisor of Surveys.

Q. Did you follow the lines pointed out by him?

A. Yes, sir, and identified many of the angle points, and meander corners.

Q. Did Mr. Kidder show you the Warren Meander line along the fractional Southwest quarter of Section Ten?

A. Yes.

Q. Where did you begin your investigation of the land in suit?

A. Angle post Sixteen on the Warren lines, that is where the patented land adjoins the land in suit.

Q. State whether or not there was pointed out to you in the Fractional Southwest quarter of Section Ten, an area of land covered by water, which was included in the Warren survey, or land whether covered by water or not, very low place?

A. Yes, sir, I found within the tract of land surveyed by Warren a peninsula, covered with water most of it, or very low swampy.

Q. Did you examine the land included by Warren in his survey of the fractional Southwest quarter of section ten?

A. Yes, sir.

Q. Did you make an ecologic investigation of it?

A. Yes, sir. Part of it, a large part, not only below the 173.09 foot contour line, but also below the present mean high water, and in those parts there is no tree growth, or if any an occasional cypress, and on the other parts of that patented land or peninsula, the growth was rather young, low land timber.

Q. Did you examine the land outside of that water area with respect to their tree growth?

A. Yes, sir.

Q. Did you go West of the Warren meander line in Section Ten, on to the land in suit and make an ecological investigation?

A. Yes, sir.

Q. What have you to say with reference to the difference, if any, between the timber growth on the
235 land that Warren included in his survey and the land included in this suit, which was omitted?

A. As one goes West the land gradually rises and the trees become more and more up land trees and larger and older. Almost immediately across the line on the omitted land I noticed several large willow oaks adjacent to the of the wells, I think Well Number 7. Then going further West above the well, towards the western part of Section Nine, near well Number Six, I find still higher timber, post oak predominating very largely, old post oak, one hundred and fifty or two hundred years old.

Q. You spoke of seeing willow oaks in the land omitted by the Warren survey?

A. Yes.

Q. Did you make any age counts to determine of ages of those trees?

A. I did, but I cannot recall them off hand?

Q. Examine your memoranda?

(Witness examines memoranda.)

A. My counts were made more abundantly of the Post Oaks near Well Number eight, there was one eighty years of age, another ninety years of age. The willis are rather of rapid growth as compared to Post oak, a willow oak in the neighborhood of one hundred years old, another one eighty-seven years old, near Well No. 10.

Q. You spoke of Post Oak on the omitted area, do you remember the position generally speaking, of those Post oak, in regard to the level?

A. They are entirely above the 180 foot contour, on the higher parts of the land. They first appear about the 180 foot contour, and more abundant at the 185 foot contour. There are a great number of them near Well No. 6 on Lot Number Nine.

Q. Did you make any age counts of post oak trees?

A. Yes, sir, near Well Number Six in Lot Nine, I made a count of one one hundred and seventy-two years old, another one hundred and seventy-nine, another of one hundred and seventy-seven years old.

Q. Was anyone present to point out the position of those oaks with respect to Well No. 6?

A. Yes, sir, Mr. Arthur D. Kidder.

Q. Where did you find the Post Oaks that you refer to?

A. Right—they were very close to the section corner between sections Nine, Ten, Fifteen and Sixteen, that was one of the points we found them at the corner of Sections Nine, Ten, Fifteen and Sixteen, and just North of that and west of the wells there is a great number of large Post Oaks, some of which are cut.

236

Q. Look at your notes and see if you find the position of those trees?

A. One, one hundred and fifty feet North of the well, the other two I do not know, but very close, all in that same position, in that general position.

Q. Referring to the oak one hundred and fifty feet North of the well did you measure it to determine its diameter?

A. Yes, sir, twenty-nine inches in diameter, and one hundred and seventy-two years old.

Q. Did you ascertain the age of that tree?

A. Counted the annual rings.

Q. Had the tree been felled?

A. Yes, sir. I may say the estimate was one hundred and seventy-two years plus, the plus represents the time since the tree was felled, it had been felled at that time. The age was one hundred and seventy-two years according to the rings, and the rings were comparatively close.

Q. You say that the rings were close together?

A. Yes, sir.

Q. What did that indicate?

A. Well it indicates in general, unfavorable conditions for the growth. Under favorable conditions for growth the rings are far apart and when the conditions are not so favorable the rings are close together. When conditions are bad you find the rings close together, with respect for instance to the shade over the trees, and the rings are close together, then when there are more favorable conditions, more light, then the rings are further apart.

Q. You mean by favorable conditions, more open conditions?

A. Yes, sir, may be other things affect it, but must be the light that affected it in these high lands.

Q. Now, in that particular case it was a stump of the tree that you made the count?

A. Yes, sir.

Q. Do you remember whether or not you made a discovery as to how long it had been cut?

A. I presume that I did, but I did not make
237 a record of it, but I feel that it was not over a year or two years.

Q. Your count showed that the tree was not less than one hundred and seventy-two years old?

A. Not less than one hundred and seventy-two years old.

Q. You spoke of another tree that you found near Well No. 6?

A. Yes, two other trees.

Q. What was the diameter of the one of those trees that you mentioned as being one hundred and seventy-nine years old?

A. That was thirty-two inches in diameter, the one one hundred and seventy-two years old was twenty-two and a half inches in diameter.

Q. What did you find in connection with those trees, they had been felled?

A. Yes, sir.

Q. Did you count the rings on the stumps?

A. Yes, sir.

Q. What does a ring represent?

A. Represents one year's growth.

Q. You found that three one hundred and seventy-nine years old?

A. Yes, sir.

Q. Now, referring to the third tree that you mentioned, state its diameter?

A. Twenty-two and a half inches in diameter, I did not locate that exactly, the first was located on the 180 foot contour and one hundred and fifty feet North of the well, and the others were only a few feet from that, so close I did not make a note of their exact location.

Q. How old was the third tree that you mentioned?

A. The diameter was twenty-two and a half inches and it was one hundred and seventy-seven years old.

Q. That was a stump that you counted the rings?

A. Yes, sir.

Q. How long had that tree been cut?

A. I could not tell exactly, but a year or two or three years.

Q. Doctor, please refer to the topographic Plat marked Plaintiff No. 10, and state what lot of the land in suit you found those trees, if you may know?

A. On Lot Number Nine.

238 Q. Lot Number Nine of Section Ten?

A. Yes, sir.

Q. That is one of the lots in this suit?

A. It is.

Q. What are the characteristics of the Post Oak tree, with respect as to whether or not it will grow in water or tolerate water?

A. One of the most intollerent of water of any tree that grows and it only grows on up lands that are practically never submerged except for a day or so at a time. It not only will not germinate in water, but will not tolerate water standing on the ground, and it must have dry ground, dry up land.

Q. State whether or not the finding of Post Oak stumps, three of them, of that kind, showing such age, throws any light upon whether or not the land upon which they were found was or was not a part of the bed of the lake in 1839?

A. Beyond all question it could not have been the bed of the lake for one hundred and seventy-nine years, which was the age of the oldest of the trees.

Q. From the position of these trees and their age, what would you state with reference to whether or not Lot Number Nine of this land was a part of the bed of Ferry Lake in 1812?

A. It certainly could not have been. The whole of Lot Number Nine was covered with timber, with trees many of which antedated 1812, all over the entire lot.

Q. Are there several post oak trees on that lot?

A. Yes, sir, there are a great many standing trees, and I could only estimate their ages, as compared with those that I counted, and there were a great many of the approximate age of those I counted.

Q. Is the Post Oak tree a tree that characterized up land?

A. Absolutely so.

Q. Does the Post Oak tree grow on any up lands, besides in Louisiana?

A. Yes, sir, in various portions of the United States. Have them in Connecticut on dry up land, also in Illinois, Arkansas and Texas and many other States. They grow on high up lands.

Q. Grow on high up lands?

A. Yes, sir, even on the Ozarks, even higher than it is here.

Q. What are the general characteristics of
239 the timber growth on Lot Number Nine?

A. The Eastern part of the low is lower than the Western part, in fact the Southeastern corner of the lot gets down to the 173.09 foot contour, and in the Southeastern part the timber is almost solely willow oak, over cup, while on the Northwestern part it is most Post Oak and pine, and I think some black jack.

Q. Will the willow oak or water oak germinate in water?

A. No, sir, and the name is a joke, when it is called a water oak tree. There are now water trees. The name was evidently given by some foolist Botanist, as they will not germinate in water, and will not tolerate water except for a short period.

Q. Now, in what portion of Lot Nine do you find the water oaks?

A. I could not tell exactly. I remember seeing them there, the willow oaks.

Q. Find a great many willow oaks?

A. Yes, sir, some five feet in diameter.

Q. Find any overcup oak?

A. Yes, sir.

Q. Where were they.

A. They were mostly below the 180 foot contour, from that down to 173.09 foot contour, the Southeastern part of the lot.

Q. What did the presence of the willow oaks, show to you as an Ecologist, with respect to whether or not this land was a part of the bed of Ferry Lake in 1812?

A. Those trees will not tolerate lake conditions or even swampy conditions, and they have to be free from water, and it certainly could not have been a lake in 1812, with those trees on it.

Q. Do you find any black jack trees on Lot Number Nine?

A. I suspicion so, they grow very close to the border of lots eight and six and I would not say absolutely, I seen them on Lot Nine.

Q. You remember seeing them?

A. Yes, sir, on the highest part of the land in suit, but I would not testify that they were on Lot Nine, I know that I saw some on lot eight, but would not say absolutely on Lot Nine, but I suspicion as they were scattered around in various places.

Q. You have already stated that you found black jack in Lot 8?

A. Yes, sir.

Q. What did the presence of the Black Jack
240 oaks indicate?

A. That indicated the same as the Post oak, that same was dry, they grow on higher and dryer land than the Post Oaks, but the two are often associated, often find them over dry land, some black jacks and post oak.

Q. Black Jacks are up land trees?

A. Absolutely.

Q. What are the general timber characteristics of Lot Number Eight?

A. Lot eight, is to the Western part of the land, and mostly the whole of lot eight is up land, covered with Post Oak and pine.

Q. Does pine trees germinate in water?

A. No, sir.

Q. Will they tolerate water?

A. No, sir, except for a day or two at a time.

Q. Only grows on up land?

A. Yes, sir, it is a species that grows on up land. There are some pines that tolerate some water, but those of North Louisiana are intollerant of water.

Q. What does the presence of the pine trees on the tract of land indicate with reference to whether or not that tract was submerged at the time that the trees germinated?

A. Absolutely impossible. Pines require dry up land, for growth and development.

Q. Did you make any investigation on Lot Ten of Section Ten, relative to the timber growth?

A. Yes, sir, especially around Well Number 7.

Q. What did you find with reference to timber growth on that lot.

A. Well Number seven is lower, nearer the 173.09 foot contour than any other well in suit, a little over 175 foot contour and right around that well, on all sides I found very large willow oaks, over cups. One willow oak at the well four feet in diameter.

Q. Was that oak growing?

A. Yes, sir.

Q. Was it possible for you to make an estimate of its age?

A. Well, I would say, I would make an estimate that it was one hundred years old.

Q. I will ask you to state whether or not you observed a red gum near that well?

241 A. Yes, sir, several cut, some of which antedated the year 1812.

Q. Do you remember the diameter of the red gum?

A. I do not remember exactly but about two feet.

Q. Are you able to make an estimate, or did you estimate at that time, the age of the red gum?

A. Yes, sir.

Q. Was growing trees?

A. Yes, sir, growing trees.

Q. And it was impossible of course to get an exact count?

A. Yes, sir.

Q. Did you find any trees growing, immediately in the neighborhood of the well on Lot Ten, that antedated 1812?

A. Yes, sir, some oaks and some gums too.

Q. Well, what did the presence of those growing trees indicate to your mind?

A. It indicated that the conditions existed there in 1812 the same as they exist at the present time.

Q. In your opinion, as an ecologist, was the land shown on Plat, as Lot Ten of Section Ten, a part of the bed of Ferry Lake in 1812?

A. No, it was not.

Q. In your opinion as an Ecologist, I will ask you to state whether or not, any of the areas involved in this suit, lots eight, nine and ten of Section Ten, was a part of the bed of Ferry Lake in 1812?

A. There was none of it in the bed of Ferry Lake in 1812.

Q. Was any of the area involved in this suit a part of the bed of Ferry Lake in 1839?

A. The growth shows the condition of the lake in 1812 and 1839 were identical, and it could not have been the bed of the lake at any time.

Q. I call your attention to the fact that according to the Kidder Survey, the area of land lying West of lot eight and nine was omitted by the Warren survey, in addition to the land in suit? I will ask you to state whether or not you examined lots five and six of Section nine?

A. Yes, sir, I examined the growth on these lots.

Q. What Ecologic conditions did you find as to those lots?

A. I found that the lots consisted entirely of very high land and for the most part, occupied by
242 Post Oak, Pine, Black Jack Oak, except in lot six there is a considerable area in cultivation, and I presume that it was occupied by the same timber originally.

Q. Did you make any age counts, on either of these lots?

A. My impression is I did not, made the age counts mostly in proximity to the wells. I do not think that I made any age counts in either of these, but I noticed that there were a great many post oak, as large as those I did count in nine, there long antedating 1812.

Q. From your examination of lots five and six of Section Nine, which lies between the area in suit and the lake, I will ask you to state whether or not, either of those lots were a part of the bed of Ferry Lake in 1812?

A. They certainly were not.

Q. State whether or not, they were a part of the bed of Ferry Lake in 1839?

A. They certainly were not.

Q. From the timber growth on Lots Five and Six of Section Nine, would you say those lots were subject to overflow?

A. They are not subject to overflow, except the edge of the lake, as that on the edge of the lake would be

subject to overflow during high water, but barring that strip, they are not.

Q. What would you say with reference to Lots Eight, Nine and Ten of Section Ten, and the timber growth thereon, would you say they are or are not subject to overflow?

A. They are not subject to overflow, except the East end of Lot Ten, close to the lake, which is subject to overflow during high water, temporary overflow.

Q. At what elevation?

A. I have not been there in periods of great overflows, but certainly would not exceed 175 or 176 feet, under present conditions, which would be very rare, and for a very short time, might be for a few days. Of course a short overflow does not leave any very pronounced Ecologic effect.

Q. I will ask you to refer to the West line of the Warren survey of fractional Southwest quarter of Section Ten, beginning at the North end, from that on and state what are the timber characteristics on both sides of that line?

A. They are identical on both sides. The Northern part of Lot Eight the timber on both sides is
243 Post oak and pine, going further South the line decreases in altitude, getting into the willow oak, overcup oak, gum, and of course in time going down into the lake and there you have the cypress on both side the same At all points it is the same on both sides of the line from the higher altitude down to the lower.

Q. State whether or not you found any evidence of a stream or water course along the Western meander line, as surveyed by Warren in 1839?

A. No.

Q. From the point view of an Ecologist, is there anything whatever in the timber growth that justified

the running of the Warren meander line in the position it was run?

A. No, sir, seems absolutely without justification.

Q. I believe that you have stated that the timber growth was practically the same on both sides?

A. Yes, sir, therefore there was certainly no justification.

Q. State whether or not you examined the Bristol line, where it turns from the lake?

A. Yes, sir, I followed across the Bristol line, went over it twice in December and yesterday.

Q. You were on the land yesterday?

A. Yes, sir, I spent the entire day on this tract.

Q. On yesterday did you go over these lots?

A. Yes, sir, more than once.

Q. What have you to say with reference to the timber growth on the Bristol line running East and West, Sections Nine and Ten—I will show you plat, Plaintiff's Exhibit 8, and direct your attention to the line running from "A" to "B" and from "B" to "C," and I will ask you to state whether or not you examined the timber growth and the ecological conditions along that line?

A. Yes, sir. Leaving the lake at point "A" in Section Nine the timber has been cut, and part of the land there is in cultivation, but after a short distance up the line the timber is black jack, post oak and that continues on and is the same on both sides of the line. One could not possibly trace the Bristol line by the vegetation, and absolutely identify it, it is absolutely identical on both sides.

Q. After leaving point "A" running East, is
244 there any evidence, from the timber growth, of that line ever having been the border of a lake or stream?

A. No evidence of that whatever.

Q. What is the character of the ground on either side of the line from Point "A" to Point "C."

A. All high ground, and the same type of ground, with post oak stumps and pine stumps found where it is cleared, and where it is not cleared, it is a continuation of Post Oak, and black jack forest, the whole length of the line to the East.

Q. Doctor, as I understand it in 1914, you made an examination of Ferry Lake itself and the timber growth?

A. Yes, sir.

Q. Along the margin of the shore, and up on the high ground?

A. Yes, sir.

Q. Any timber growing in Ferry Lake?

A. Yes, sir, cypress and of course there is a great deal of dead timber still standing there?

Q. Did you make any age count of any of the trees at the time?

A. Yes, sir, a few cypress.

Q. What did you find with reference to the age of those trees?

A. Those are all old trees and undoubtedly antedated the raft formation of the lake.

Q. Did you find any evidence, in the lake or in the border of the lake, to indicate the origin of that lake?

A. I made some study of the neighborhood and the overflows and the raft theory, which is correct, which showed that formerly there was a valley there, and the stumps are throughout that valley and it was damned up by the raft, which stopped up Cypress bayou and put the water in that valley and of course in that way a great deal of the timber, in fact all of the timber that existed there, except the cypress, was killed. Some of the killed timber is still standing and at the going out of the dam, or removal of the raft that let the water down.

Q. From your examination, as an Ecologist, did you find any evidence that showed that prior to the formation of the great raft, that prior to the formation of the great raft, that the valley now occupied by Ferry Lake, was a forested valley?

A. Yes, sir, it is very evidence, great amount
245 of timber standing. In the eighteenth century it must have been a forest, as some of the trees are still standing, the Cypress in the low places, and when the lake came on it killed all of the other timber, except the cypress.

Q. You think that that was the condition of the area prior to 1812?

A. Yes, sir. That is shown by the age of the cypress trees.

Q. State whether or not the mean high water elevation of Ferry Lake, as it existed in 1812 and 1839 can be determined according to the principles of ecology?

A. By the study of the character and age of the tree growth in proximity to the shore, if the water level had been at the present mean high water level at the present time, you would have overcup oak, red oak and gum clear down to the present water edge, trees that would have been perhaps one hundred years of age, but as they are not, we know therefore that the water level has not been at the present water level. We begin to find these trees only at the 173.09 foot contour, therefore we know that the 173.09 foot contour is the proper level of the lake in 1812 and 1839.

Q. Suppose that you went to the border of the lake, for the purpose of ascertaining the mean high water elevation of 1812, what would be the first work that you did, to ascertain that fact?

A. I would first try to find trees dating back that far, and the kind of trees and they would determine what the level of the lake was at that time.

Q. Now as a matter of fact you pursued that course in this instance?

A. Yes, sir.

Q. Where did you begin your investigations of Ferry Lake in 1914?

A. I began on the South side of the lake, most in lands not now in suit, then extended it North of Mooringsport.

Q. Can you indicate the section in which you began your work?

A. In Section Twenty-seven, was the first one of my trips, above Mooringsport, then west along the Southern shore of the Lake to the Texas border, probably covering parts of sections thirty-five, twenty-six, twenty-seven, twenty-eight, thirty-three, thirty-two and thirty-one, stopping a little short of the Texas border.

Q. What ecologic evidence of the existence of the mean high water mark of 1812, did you find along the margin of the lake in those sections?

246 A. I found two lines of evidence there. The trees, a number of which had been cut and offered an opportunity to determine their ages and also the water marks along on the 173.09 foot line, and the roots of the trees showed the wave action.

Q. What was the nature of the water marks on the trees?

A. Mostly the exposed roots of trees, very close to the shore and the waves beat against them will wash away the soil and leave the roots exposed, in fact the soil had been washed away, and they were up in the air, the roots propping them up.

Q. In 1914, you examined the shore line in this Township?

A. Yes, sir, I walked the entire area of the shore. I remember going across the bridge there at Mooringsport and striking directly west following the shore line

all the way around to the north end of Section Twenty; also at one time crossed James Bayou on the west side very close to the Texas line.

Q. Now did you find the same timber growth all around the lake?

A. Yes, sir.

Q. You have been all around the lake?

A. Yes, sir, except in Texas.

Q. I mean in this Township?

A. Yes, sir, entirely around the lake in this Township.

Q. You found the same general timber conditions around the shore?

A. Yes, sir, practically the same zonozation of timber—cypress, over cup, oak and pine, so that one can tell the level.

Q. Is the timber growth around Ferry Lake, around the margin of Ferry Lake in Township Twenty, North of Range Sixteen West, sufficiently well marked to enable an Ecologist to ascertain the mean high water elevation, without the aid of an instrument, or a surveyor?

A. Yes, sir.

Q. It could be done then independently?

A. Yes, sir.

Q. Did you find any difference in the mean high water elevation at any point around the lake, or was it the same all around the lake?

A. Same all around, same elevation 173.09 level. Of course, I identified various places by the posts.

Q. No conditions there to make the mean high water elevation higher at one place than another?

247 A. No, sir, was even.

Q. Now how do the timber conditions and growth you found along what you consider the high

water elevation of the lake in 1812 and 1839, agree with the contour 173.09, established by Mr. Kidder?

A. They agree with it very precisely.

Q. Did you make any ecological investigation of other lands involved in the Ferry Lake case, in suits now before the Court?

A. Yes, sir, made investigation in every one of the suits before the Court.

Q. Do you remember where you began your investigation of the tracts in controversy?

A. Yes, sir, section twenty-seven I think.

At this point the taking of testimony was adjourned until April 29th, 1918.

April 29th, 1918, all parties being present, the taking of evidence in the above cause was resumed.

At the request of Court, the Master discharged the following witnesses for the Government until Wednesday, May 1st, 1918; namely: Mrs. A. L. Ballard, W. G. Angel, Vernon Teat, E. D. White, George N. Vaughn, J. W. Tedder, W. J. Jones, C. B. Croom, J. T. Ivey.

Dr. HENRY C. COWLES, a witness, being on the stand, his direct examination was resumed:

By Mr. Hunter:

Q. Dr. Cowles, state how the Ecologic evidence you found, on the other tracts involved in the Ferry Lake cases, on the same elevations, compared with the timber growths on the land involved in this suit, on the same elevations?

A. I found that the ecologic evidence was the same in every one of the areas investigated, that is to say, the

relation of the timber growth to the elevation was the same, clear around the lake.

Q. State whether or not you made any age counts of trees in Section Twenty-seven, on the land
248 omitted by A. W. Warren from his survey, in that section?

A. I made some counts that I recall, do you wish them specified—I remember making some counts there but do not recall them without reference to the notes. (Witness refers to notes.) I find that I made some counts of age of trees in the neighborhood of the Greene No. 5 well, in Lot Three I think of Section Twenty-seven. In the neighborhood of that well I notice a Post Oak over two hundred years of age. The count of rings showed one hundred and seventy years, but a large amount of the heart wood was gone, and I estimated with the others, that the tree must have been exceeding two hundred years old.

Q. Was that stump on the land omitted by Warren from his survey in that section?

A. Yes. I also noticed a good many standing trees, post oak, that I estimated to be from one hundred and twenty-five to one hundred and fifty years of same. Some small oaks in that same neighborhood. There was one post oak, eighteen inches in diameter, ninety-one years old; one one foot in diameter, sixty-eight years old. Those two counts showed of course that the Post Oak grows very slowly. The tree one foot in diameter sixty-eight years old gives a comparison of the two other, one three feet in diameter in that neighborhood that were not cut down, making their age between one hundred and fifty and one hundred and seventy-five years old, or even two hundred years old. I found one Post Oak five feet below the level of that well, which was over one hundred and forty years of age, the heart of that also was gone, so that I could not get at the age

exactly. That was seventeen and a half inches in diameter.

Q. At what elevation?

A. Five feet below the well level.

Q. Did you make a memoranda of the level?

A. No, sir, but I could figure it was five feet below the level of the well, and I note that the well here seems to be figures at 185 foot contour, and that shows that it was just about the 180 foot contour.

Q. Did you make any age counts of trees in Section Twenty-three on the land omitted from the A. W. Warren survey, in that section—that is the land involved in the Loutz case?

A. I do not recall that I did.

249 Q. There are no wells on that?

A. No, sir. The most of my counts were in proximity of wells in suit. I do not think that I made any at that point.

Q. Now referring to Sections Twenty-five and Thirty-six, the land involved in the case of the United States vs. Mrs. Jesse N. LaRobadoerre, did you make any age counts in the omitted area involved in that suit?

A. I know that there are a great many large trees of great age all along, but I do not know whether I made any age count there or not. There are large trees two or three feet in diameter, over a hundred years of age, Post Oak and others.

Q. Did you make an Ecologic study of lot one of Section Twenty-four of the land omitted by A. W. Warren?

A. Yes, sir.

Q. What did you find with reference to the timber growth and age of the trees?

A. I find the conditions there, corresponding in a general way with those of the other sections in this case. In this area there was a good deal of land in cultivation,

not much timber, cleared, so I did not find so much Post Oak timber on that area on that account the area that it occupied was cleared. Below the 180 foot contour was the usual willow oak, overcup oak, planer tree and some persimmon and red gum. I did find some Post Oak above the 180 foot contour, but not as many as usual, on account of the land being in cultivation. The data obtained there corresponded exactly with the data from other places.

Q. Now referring to Lot One of Section Thirteen, involved in the Gilbert Special Number One, in the suit of the United States vs. Gulf Refining Company of Louisiana and others, I will ask you to state what kind of land that is?

A. There is some very high land, forming a very pronounced ridge and the timber has been cut, that is the most of it, but of course there is still some that remains, and there are a great many stumps, having been cut so long that I could not get a ring count, but from the study made, I was convinced that there were many trees very old, from one hundred and fifty to two hundred years old, Post Oak were very common on that land. There was a precipitious cliff there, be-
250 ing a very high point, and from that point to the lake we have a forest of vegetation very conspicuous, consisting of pine and cypress and also some overcup oak above, and the Post Oak stumps on the high ground above the 180 foot contour.

Q. I direct your attention to Lot Seven of Section Ten, being the land involved in the suit of the United States vs. J. M. Walling et al., omitted from the A. W. Warren survey, and I will ask you if you made an ecologic examination of that tract, and if so, what you found?

A. On that part there was very excellent data obtained. I noticed small oaks, red gum just above the

173.09 foot contour, and then at this point on the higher ground I found some post oak stumps and was able to count the rings, one thirty inches in diameter one hundred and thirty-one years old, plus, that is some of the rings were a little hard to count, on account of the weather. Another oak standing, considerably larger and older, standing in the exact position on the high ground near the well, also some pine standing, and the Post Oak which showed the high character of the land.

Q. I call your attention now to Lot One of Section Fifteen, and Lots One and Two of Section Sixteen. I do not know whether you made any age counts on those lots or not, but I show you the supplemental plat of the Township and will call your attention to the location of those lots and ask you to state whether or not you have been over the ground there?

A. Yes, sir, I have been over it very carefully.

Q. What ecological evidence did you find there?

A. The evidence there is practically the same as elsewhere. There is below the 173.09 foot contour considerable cypress in that space and some very old cypress dating back to before the raft stage. Then on the ground above the present water level, and up to the 173.09 foot contour we also have some old cypress, but a large amount of young growth, consisting of oak, persimmon, and then above the 173.09 foot contour, we have very large overcup oaks, willow oaks and gum up to the 180 foot contour, then above that we have the Poak oak, being very large and old, been there for one hundred and fifty years or more. The relation of those trees to the level is very pronounced and there is no place that a check shows better.

Q. That land was omitted from the War-
251 ren survey?

A. So I understand.

Q. I will ask you to state whether or not you followed the Kidder line around Lot One of Section Fifteen and Lot Two of Section Sixteen, and lot one of Section Sixteen, and Lots Five and Six of Section Nine?

A. Yes, sir, I followed the Kidder line nearly all round those lots.

Q. What have you to say with reference to whether or not the Kidder line correctly represents at that place the mean high water elevation of Ferry Lake in 1812, and 1839?

A. Yes, sir, the correspondence is very close there, shown by both the character of the timber above and below the line and the phenomena of the wave action at the line.

Q. You visited the house site of the Jeems Bayou Hunting and Fishing Club, in Lot One of Section Nine?

A. Yes, sir.

Q. Did you find any trees growing on that site?

A. In the immediate neighborhood of the Club house, most of the trees have been cut, the land there is rather extensively in cultivation. There were a few remaining Post Oak trees to the West of the Club House, and to the North of it, of considerable size and age, which must have been there prior to 1812, showing that the land has been high and free from overflow for that length of time.

Q. Dr. Cowles, state whether or not you made an Ecologic examination of Lot One of Section Three, involved in the suit of the United States vs. Charles W. Lane, et al.?

A. Yes, sir, I recall that. I made a study at that point, the Lane Well, involved in the suit, which is on the 180 foot contour, and it is surrounded by very large oaks, willow oaks, water oaks and I made some notes of some over two feet in diameter and at that point

I noted that the omitted land was essentially the same as the land included, and on the land included, only a short distance, within two hundred feet East of the well, I noticed a pine, whose rings I counted but not on the omitted land, but the surveyed land the same elevation as the well.

Q. Now what age was that pine?

A. One pine was eighty three years old; another eighty-eight years old and showing of course
252 that that had been high land for that period of time, and not subject to overflow.

Q. What was the diameter of the pine stump that you found?

A. One was a thirty-three inched, and another thirty-two inches. The pine that was thirty-three inches in diameter was eighty-three years old, and the pine that was thirty-two inches in diameter was eighty-eight years old.

Q. Now were those trees growing at the same elevation as the elevation at the well?

A. Yes, sir, I could not with the eye note any difference.

Q. Doctor, did you follow the Bristol section line, between Sections Three and Four?

A. Yes, sir.

Q. What timber characteristics did you find along that line, if you recall?

A. That line as I recall is the section line, of course the descends below the line, the topography there goes up and down, some places traversing low ground, covered with cypress, and other places it goes up over ridges, covered with oaks.

Q. I will ask you to state whether or not, there is any evidence on the ground, from the timber growth or otherwise, that this section line follows the bank of James Bayou?

A. No, sir, none whatever, does not have any relation to the bank of James Bayou, you are referring to the East and West line between Sections Three, Four, Nine and Ten, that is the one that I am assuming you are referring to.

Q. The line that is the Southern boundary of sections three and four and the Northern boundary of sections Nine and Ten?

A. Yes, sir, that is the one that I was referring to.

Q. I call your attention to Lot Three of Section Four, being the land involved in the suit of the United States v. Hanson et al, and I will ask you to state whether or not you made an ecological examination of that tract of land, what is known as Briar point?

A. Yes, sir, I made an investigation of that tract of land?

Q. What did you find with reference to the timber growth, the age of the trees etc.?

A. I found that at the level of the well, that is Hanzen No. 1 well, overcup oak, some being two feet in diameter; overcup stump twenty-three inches in diameter, one hundred and thirteen years old;
253 another one thirty and a half inches in diameter, one hundred and fifteen years old, that is the rings, and I estimated that the tree had been cut for four or five years.

Q. Now at what elevation were those stumps?

A. Some of the stumps we counted were slightly above the well elevation—I did not know what that was—the well seems to be very close to the 173.09 foot elevation, and these were about 174 or 175 foot contour.

Q. Did you make an examination of Lot Four of Section Four?

A. Yes, sir.

Q. State the result of your examination with respect to the character of the timber growth and age of the trees?

A. The Hanzen No. 5, that well is also very close to the 175 foot contour line—I see that I made a mistake assuming that was 183, in the previous answer, it was 175 foot contour, that is the level of the Hanszen No. 1. 175 foot contour is the level of the Hanszen No. 5 and Hanszen No. 1. In the Hanszen No. 5, on lot four of section four there are two overcup oaks at the stump, at the well, one thirty-two inches in diameter that showed that it was one hundred and eleven years old, another the same diameter, one hundred and sixteen annual rings. There are a number of standing trees there at the well.

Q. Now, in regard to the age of these trees, an age ring corresponds to one year's growth?

A. Yes, sir, age ring, one ring represents one year's growth. There are also standing willow oaks and overcup oaks corresponding to size and age.

Q. Doctor, did you follow the Bristol line in front of James Bayou, being the Western line of Sections Four and Nine?

A. Yes, sir.

Q. Where is that line run with reference to the contour?

A. Well, as I recall it, it is run on top of the bluff. I am not sure about that—I know the ground, I know the territory above but I do not know the exact height.

Q. I will ask you whether or not you followed the Bristol line from the point "A" to the point "B" and to point "C," shown on the resurvey plat marked plaintiff 8?

254. A. Yes, sir, I followed that line twice, once in December, 1917, and once in this present month.

Q. What have you to say with reference to whether or not that is a correct meander line, if it was intended to meander the lake or bayou?

A. I cannot of course say whether it was intended as a meander line, but it is certainly not a meander line, has no relation with any lake, not North and South, most of the distance is exactly the same on both sides of the line, the same belt of timber.

Q. Are you familiar with the point indicated by the letter "B" on that line, approximately?

A. Yes, sir. We followed this line, this last trip, followed the line North and came to "B" then went North?

Q. What are the timber characteristics at that point?

A. It is high land timber, post oak, black jack oak, pine and some of the post oak are very old, one hundred or one hundred and fifty years or more growth the same on each side of the line?

A. Exactly, with this exception, that it is slightly lower North of the line than it is South, but not much, right on the line it is exactly the same, but one could see going a little North, it sloped a little towards the land included in the survey?

Q. Sloped towards the land included in the survey?

A. Yes, sir, it seemed that the land was a little lower to the Northwest, than Southeast.

Q. Is there any evidence of a stream or lake, bay or any other water course along that line?

A. None whatever.

Q. Could you see the lake from the Point "B" on the Bristol line?

A. No, sir.

Q. Did you follow that line from the point "B" to point "C"?

A. Yes, sir, on my first trip last December.

Q. What are the characteristics along that portion of the line, with reference to timber?

A. The same, it is high land timber, Post Oak, pine and some black jack oak.

Q. The growth is substantially the same on each side of the line?

A. Yes, sir.

Q. Is there any evidence of any stream or
255 water course along that portion of the line?

A. None whatever.

Q. Now, referring to that portion of the line from point "A" to point "B," on the resurvey plat marked Plaintiff 8, state whether or not, any of the timber has been out?

A. Yes, sir, the first part of the line, towards the west has been cut, and I presume it has been in cultivation, in fact the other day I found it plowed.

Q. Is there any evidence or a stream or water course along that portion of the line?

A. No, sir, the land slopes also to the South of the line, but there is no evidence of a former lake bed or water course.

Q. Referring now to the property in suit, I will ask you to state whether or not there is any swamp vegetation on the land in controversy?

A. No, sir, no swamp vegetation on the land in controversy.

Q. Is that land swamp land?

A. No, sir.

Q. Is it marsh land?

A. No, sir.

Q. Are there any basins or ponds on that land?

A. No, sir, none whatever.

Q. State whether or not that land could be cultivated without artificial drainage?

A. Yes, sir, in fact found an area in cultivation near it, not in the land in suit, but the land to the West and South, between that and the land is a garden tract, also to the West and Southwest are garden tracts.

Q. I will ask you to state whether or not there is a distinct belting of timber below and above the 173 09 foot contour, as established by Mr. Kidder?

A. Yes, sir, there is.

Q. What kind of timber is below that contour?

A. Below the 173.09 foot contour we have old trees confined entirely to cypress and which antedate 1871 or 1873 level, that is the raft level, and trees that have come in since the early seventies are young trees, made up of other kinds such as red haw, persimmon, and willows.

256 Q. Now state what belting of timber is characteristic of the ground immediately above the 173.09 foot contour?

A. Immediately above the 173.09 foot contour, all of the old timber is red gum, overcup oak and willow oak and some young pines come in, but the old timber antedating the seventies is overcup oak, possibly some cypress.

Q. State whether or not, this land in suit, was, or any of the land omitted by the Warren survey of this Township was formed by the recession of the waters of Ferry Lake?

A. No, sir, none of it was formed by the recession of the waters, of the lake, above the 173.09 foot contour.

Q. Was any portion of it formed by the recession of the waters since 1812?

A. None.

Q. Now referring to the present timber growth on the land in suit state whether or not that timber

growth, was preceded by other trees or whether the trees there now are descendants of former trees?

A. Yes, sir. I am satisfied descended through many generations of similar timber, and can discover that it was preceded at least one generation of similar timber.

Q. Does the fact that there are most of the trees on the land, which are young trees, indicate that the land, was recently formed?

A. On all land, the most of the timber is young timber, just the same as human science, the most of the people are young, the old die off and the young come on. There is always more younger than old.

Q. Is that characteristic of timber everywhere?

A. Yes, sir, everywhere.

Q. State whether or not you found enough of the old trees on this land, which you counted the ages of, to demonstrate conclusively that the land was in place in 1812 and 1839?

A. Yes, sir.

Q. State whether or not, the lake, in your opinion, the mean high water elevation of the lake in 1812 and 1839 was 180 feet, mean high water?

A. No, sir, it was not, it was much lower than that.

Q. Upon what facts do you base your statement?

A. If the level were at 180 feet, we would have no post oak at that level, and we would have at
257 that level cypress and overcup, but the older trees would be cypress, and would not have a large number of overcup oak, because they would not have been able to stand the unfavorable conditions, so that the absence of the post oak and absence of cypress, old cypress and the presence of the old willow oak and red gum are all against any possible mean high water anywhere near the 180 foot contour.

Q. What effect would such an elevation have had upon the cypress in the lake?

A. Would have killed the cypress in the lake above the 173.09. The most of the cypress were killed, and there are the old stumps standing, and if the water had went to 180 foot contour all of the cypress in the lake would have been dead?

Q. Are there in the lake, at the present time, cypress trees growing?

A. Yes, sir, quite a considerable number, especially in the neighborhood of the land in suit, just to the South and West of there.

Q. If the mean high water elevation in 1839, had been 180 foot, what have you to say with reference to the effect such an elevation would have had in the land that Warren included in his survey of the fractional Southwest quarter of Section Ten?

A. That could have been submerged in a large part, and could not have been included as land at all, in a large part. Of course I think that is general all around the lake, around the meander it was included by Warren down to the 173.09 foot contour. If it had been at 180 feet, it would have been under water. Had it been between 175 and 180 it would have been under water.

Q. I will direct your attention to the land that Bristol surveyed in 1871, and I will ask you to state whether or not that land was in place in 1839?

A. Yes, sir, it was.

Q. Referring now to the land in suit, and other lands lying to the West of the property in controversy, I will ask you to state whether or not the timber growth, in your opinion, is substantially the same now, as it was in 1839, when A. W. Warren made his survey?

A. Yes, sir.

Q. Is it or not the same body of land that existed in 1839, when Warren made his survey?

A. Yes, sir, it is the same body of land.

Q. Doctor, you stated that you first visited
258 Ferry Lake in 1914, as I understand it, you were then under private employment?

A. Yes, sir.

Q. You were not representing the Government in any capacity?

A. No, sir, not at all.

Q. Were you representing certain mineral locators?

A. Yes, sir, Kelly and King.

Q. Had they made a mineral location in the lake?

A. I so understood.

Q. What was the purpose of your investigation at that time?

A. To see if the lake had been formed since 1812. They were very desirous to prove that no lake was there in 1812, and my investigation was along that line.

Q. Was your opinion adverse to their contention?

A. Yes, sir.

Q. Now at the time that you went there in 1914, what was the point that you were to determine, was it whether or not the lake existed in 1812?

A. Yes, sir.

Q. Did you have in view the determining at that time, the mean elevation of the lake as it existed in 1812?

A. That came in of course in the study, but that was not the major part. I simply know that I noticed the difference in the vegetation above and below the 173.09 foot contour, which was very conspicious to me.

Q. Did you, in the course of your work in 1914, under the employment of the mineral locators reach a conclusion?

A. Yes, sir, and so stated in my report to them.

Q. What was your conclusion?

A. That the mean high water level in 1812 was approximately 173.09.

Q. At the time that you made your investigation, did you know anything about the present suit before the Court?

A. No, sir, I supposed that they were instituted since —I did not know anything about them, never heard of it.

Q. Did you make your investigation with respect to this suit or any other suit?

A. No, sir, did not know that there would be any suit.

Q. Your opinion then was arrived at independent of any suit?

A. Yes, sir.

259 On cross examination, he said:

By Mr. Smith:

Q. Doctor, you say that the science of Ecology has been recognized as a special science, well recognized, about fifteen years?

A. Twenty-five years, since 1893, recognized in this country.

Q. There are about ten or fifteen of your gentlemen who are capable of testifying in these matters?

A. There are more now than at that time. We have a College of Ecological Science of America with about three hundred members, and those members would be about the number who could testify.

Q. Now, Doctor, when these surveys were made, the State was admitted into the Union in 1812 and the surveys made in 1839, as a matter of historical knowledge, lands were worth very little or nothing?

A. I so understand, not worth what they are now.

Q. If you would bring the exactness of your science of ecology to determine the various meander lines run, it would work a revolution in titles in this country?

Q. [A.] Certainly has in Arkansas.

Q. Certain has around Ferry Lake?

A. Seems to have.

Q. Now, this lake was not created by the natural contour of the land that existed there always, but was brought about by the damming up of Red River, by the raft?

A. That is my theory.

Q. Now, prior to that time, James Bayou had a well defined channel, and Cypress Bayou had a well defined channel through the bed of these lakes?

A. Yes, sir.

Q. And the land immediately adjoining these bayous was ordinary hill land, with elevations and depressions?

A. Yes, sir, some of the timber in Ferry Lake shows that.

Q. In that Lake you find some very high mounds, hills as it were in the lake?

A. Yes, sir.

Q. So that you find cypress trees growing in that lake, because of the high elevation of different parts?

A. Yes, sir.

260 Q. That would be very precarious evidence to go by, the cypress in that lake?

A. I do not think so.

Q. You think because you happen to find one large cypress tree dead, and another living, that would indicate anything as to the origin of that lake?

A. Yes, sir.

Q. Now, Mr. Hunter was asking if the dead cypress in the lake, did not show that it had been a lake for years and years?

A. I concluded that the lake had not been there over one hundred and fifty years in the original survey, could not have been there longer than the age of the cypress trees.

Q. Well, prior to one hundred and fifty years ago, the tree live was common to that territory?

A. Yes, sir.

Q. That would be altogether different, where the lake had always been?

A. Yes, sir, if it had always been a lake, would not have been any timber there at all.

Q. A great many of those trees you testified were post oak, they will stand at least three weeks of water in the spring.

A. I have doubts about that. They would stand a few days, but three weeks would be pretty hard on them.

Q. Can you say now positively, because we have had some experience in this section with overflows on post oak land, can you say they will not stand overflow for three weeks?

A. I would not say positively, but it would be rather rough on them.

Q. Now, calling your attention to Plaintiff's Exhibit No. 10, I will ask you to look at the various wells marked James Bayou Numbers Nine, Eleven, Eight, Six, five and seven and I will ask you, if all of those wells are not in the level between 175 and 180?

A. Yes, sir, they are.

Q. I will ask you then, if the water got more than 173.09, mean high water, would it go over them, if it got between 173.09 and 180?

A. If it got to 180 it would go on all the wells. Well number six is close to the 180 foot contour.

Q. I will ask you to look at Plaintiff's Ex-
261 hibit No. 31 and if that don't indicate they would all go under between 175 and 180?

A. Yes sir, if the elevation of the water was 180 they would all go under.

Q. And if surveyor A. W. Warren got there in the Spring of the year when the water is usually high, it would have been very likely that that part of the land in dispute was under water?

A. If it was up to 180 feet it was under water, including what he surveyed as land.

Q. And the wells are in between the 173.09 and the 180 foot contour?

A. Yes, sir.

Q. Your testimony in the main has to do with the effect of the lake being formed from the artificial damming of Red River?

A. Yes sir, and it is very clearly a temporary lake.

Q. You notice, over this land that is in dispute, that there are comparatively few of the larger trees standing?

A. Well I would say that there was a pretty good number, many hundreds.

Q. Did you make anything like a count?

A. I did not count them all, but several hundreds of large oak trees.

Q. Did you count them on any one acre?

A. No, sir, did not count them.

Q. Do you know whether there is as many as two to the acre or ten to the acre,

A. More than that in many of the tracts.

Q. Now, Doctor, I understand from you that the majority of the growth, or the greater predomination of timber is young, as compared to the old?

A. Yes, sir, always.

Q. How do you explain that, when in so many of the old forest that a great majority of the older trees have been there for thousands of years?

A. Well you will find the young timber under those in all places.

Q. I can take you to numbers of places in this State, and you will not find young trees, where you will find the old trees there thousands of years old?

A. Of course very likely they have been cut out or burned out, but in the natural forest you always
262 have the new generation coming up succeeding the old.

Q. Have you been down in the Southern part of Louisiana?

A. No, sir, but in Southern Mississippi.

Q. Didn't you find that there was an unusual amount of young trees on this land?

A. No, sir, just normal in a Post Oak country, the post oaks grow more or less open, do not have as much growth, in normal post oak country as with some other species.

Q. I will ask you if you did not find hundreds of trees from eighty five, ninety, to a hundred years old?

A. Yes sir, but normal.

Q. I will ask you if it is not a fact that the predominating timber there is not about a hundred years old?

A. I doubt if you find that.

Q. You did not make that observation?

A. I was not trying to count the number of trees one hundred years old. I think it showed a normal proportion, which is you have a larger number small, than the large.

Q. If there was a great predominance of trees one hundred years old that would have some significance?

A. Yes sir, if they greatly predominated I would have noticed it.

Q. You are not prepared—your investigation will not enable you to say that that is a fact?

A. I know that there was a great many more trees below one hundred years of age than there was a hundred

years old, five, six or ten to one. The number of trees below fifty years of age is very large.

Q. I will ask you if it was not about one hundred to one, as compared to the old trees?

A. A very normal proportion in a post oak country. A great many young ones get a start, and shade others out, and only some survive. That is true with people.

On Re-Direct Examination He Said:

By Mr. Hunter:—

Q. State whether or not it is a fact that all of the wells involved in this suit are above the 173.09 foot contour?

A. Yes sir, they are all above that contour.

263 Q. Now referring to the cypress trees in Ferry Lake there, I will ask you to state whether or not, the living trees in the lake are near the edge of the shore, or out in the body of the lake?

A. They are comparatively near the shore.

Q. Have you found any evidence in the lake itself of a cypress forest that existed before the lake came in?

A. Yes, sir.

Q. State whether or not these cypress trees grew along the banks of the bayou?

A. Yes sir, they followed the banks of the bayou.

Q. Now when did the cypress, the living trees that grow along the shore of the lake, before or after the formation of the lake?

A. Before.

Q. Are they very old trees?

A. Yes sir. I did not make very many ring counts there, but the ones I did not a study of, several trees, would indicate they were one hundred and fifty years old, or older.

Q. Doctor Cowles, now I want to direct your attention to the cypress trees growing in the water of the lake, near the shore—do you recall such trees in the lake?

A. Yes sir, young trees that come up subsequently near the shore.

Q. Those young trees that come up and grew in the lake near the shore, did they grow up after the lake came in?

A. Yes sir, those grew after the lake came in, when the lake formed then a new belting of cypress come up along the edge of the lake and you have two belts, right at the shore have the young timber in a great amount that have come up since the formation of the lake.

Q. The old cypress trees, growing along the banks of the channel of the Bayou that run through that valley, were there before the formation of the lake?

A. Yes, sir.

Q. Whereas, the new cypress growing near the shore, came in after the lake was formed?

A. Yes, sir.

On Re-Cross Examination He Said:—

264 By Mr. Smith:—

Q. Doctor, you testified, I believe that you made this investigation of Ferry Lake, for Kelly and King?

A. Yes, sir.

Q. You reported to them on this lake, that it was in existence before 1812?

A. Yes, sir.

Q. That information was conveyed to the Government?

A. I do not know about that.

Q. The Government found out that you were familiar with these lands and found what your finding of the mean

high water level was, then they secured your services to make an investigation preparing for these suits?

A. I suppose so.

Q. When you went into the field, in 1917, you knew then you were to testify in the suits brought here?

A. Yes, sir.

Q. Your investigations, were to prepare you so that you could be accurate as a witness in this suit?

A. Yes sir, to go over the ground.

Q. Now relative to these cypress in Ferry Lake, where the high promintories, there is only a small amount of water above those cypress today?

A. Not exactly a promintory, looked like the line of the old bayou or slough.

Q. Now getting away from the bayou, you find small islands of land submerged, where the cypress are growing today?

A. Near the shore there are young cypress, but the old cypress are on the former slough.

Q. Don't you find islands with those cypress on them?

A. I did not see any. Of course there is high ground as compared to the body of the lake, but these cypress were along that slough or bayou.

Q. You do not find any islands?

A. No, sir, I did not notice any.

On Re-Direct Examination He Said:

265 By Mr. Hunter:—

Q. I understand you to say that your original examination of this land in 1914, was made without reference to these particular suits?

A. Yes sir, I knew nothing about this suit at that time.

Q. Was your subsequent examination, made in 1917, after the suit had been filed?

A. I so understand.

Q. Made in December 1917?

A. Yes, sir.

Q. Did you make any examination of this area before the filing of the suit, with respect to the suit itself?

A. No, sir.

LESTER L. CLEMENT, a witness for the Plaintiff, being recalled, testified as follows:—

On Direct Examination He Said:—

By Mr.Hunter:—

Q. Mr. Clement, I will show you photographs numbered from one to Thirty inclusive, numbers four, seventeen, twenty two and twenty eight are missing; I show you the photographs mentioned, with the exception of the numbers I have just stated and I will ask you to explain, why the photographs Nos. four, seventeen, twenty two, twenty eight, are not included?

A. The exposures did not turn out satisfactory.

Q. Please state who took those pictures?

A. They were taken by a local photographer.

Q. What was his name?

A. J. Dambly.

Q. They were taken by a local photographer named J. Dambly?

A. Yes, sir.

Q. Were you present when these pictures were taken?

A. I was present when all of these pictures were taken and located the point from which the pictures would be taken and also the direction in which the camera was facing, when the pictures were taken.

Q. Were all of those pictures taken under your supervision?

A. Yes, sir.

266 Q. Did you identify the land upon which the photographs were taken in every case?

A. Yes, sir, in every case.

Q. Was the land monumented in such a way that you could easily identify it?

A. Yes, sir.

Q. Are the photographs correct representations of what they portray?

A. They are, as near as can be obtained with a camera.

Q. Did you make the memorandum or legend on the back of the photographs, representing the scenes of the photograph and position of the camera, and the land upon which it was taken etc?

A. Yes sir, calling attention to special features in each view.

Q. State whether or not the notations on the back of the photographs are correct?

A. They are.

Counsel for the Government offers in evidence the photographs above mentioned, numbered from one to thirty, inclusive, less numbers four, seventeen, twenty two and twenty eight.

Filed in Evidence.

Q. Mr. Clement, I show you photograph marked No. 31 to forty inclusive and I will ask you to state who took those pictures?

A. The photographs number thirty one to forty inclusive, were taken by myself.

Q. Were they taken on the tracts in controversy?

A. They were taken on lots eight, nine, and ten of section Ten, and the land immediately adjacent to those lots.

Q. State whether or not the photographs numbered thirty one to forty are correct photographic representations of the scenes they portray?

A. They are.

Q. Have you made a legend on the back of those photographs, showing the points the photographs were taken, and the position of the camera?

A. Yes, sir.

Counsel for Plaintiff offers in evidence the
267 photographs numbered one to forty inclusive, identified by the witness.

Filed in evidence and numbered thirty one to forty inclusive.

On Cross Examination He Said:—

By Mr. Smith:—

Q. Mr. Clement, in taking these photographs you purposely took photographs showing the large trees, proving the fact that this is high land?

A. No, sir, not altogether. There are pictures of low land in there. These pictures were taken just a few days ago, 18th of April and the foliage was so heavy that we had to pick out open places in order to show anything to advantage.

Q. That is generally where you found the large trees?

A. No, sir.

Q. I will ask you if these photographs were not taken for the purpose of aiding the Government's view, of showing the large trees?

A. No, sir, these photographs were taken and show the general condition of the land in Lots Eight, Nine and Ten of Section Ten, and the land in the immediate vicinity.

Q. You did not take the lowest places?

A. I took pictures below the 173.09, and at the 173.09 foot contour and at various other elevations leading up to the 190 foot contour.

Q. Showing you photographs number thirty one to forty, I will ask you if it don't show a very flat character of land through there.

A. It does not show any hills, it shows the flat character of the land.

Q. Mr. Clement, you are familliar with the field notes of the running of the lines in Township Twenty, North of Range sixteen west, of the various surveyors?

A. To some extent.

Q. You know there has been no attempt, prior to 1917, by the Government to reclaim any land in Township Twenty North of Range Sixteen west?

A. I do not know.

Q. This is the only suit you know of, that the government is seeking to claim this so called omitted areas.

A. The various suits involving land around
268 Ferry Lake, to the best of my knowledge.

Q. You do not know of any reservation the Government ever made in patenting this particular land?

A. No, I do not know personally of such reservation, if there is a reservation, I am not familiar with it.

Q. You never heard of any such reservation made?

A. There was a withdrawal act.

Q. That was in 1909, or in 1908?

A. Yes sir, I believe so.

On Re-Direct Examination He Said:

By Mr. Hunter:—

Q. Mr. Clement, please examine photographs numbered one to thirty and select from them, views or pictures

showing high banks, sharp descents along the shores of Ferry Lake?

A. Pictures numbered two and five show a very precipitious bank along the shore of Ferry Lake. Pictures numbers Ten and Twenty one show a more gradual rise from the lake. I might state in this connection that the lands in many places, while not flat has a very gradual ascent or descent and the photographs fail to bring out that detail.

Q. Please examine photograph number Twenty one, and state what house is shown in that picture?

A. The building of the Jeems Bayou Fishing and Hunting Club, are shown on picture number twenty one.

Q. From where was that taken?

A. Reading from the memoranda on the back of view Twenty one, is noted. Lot number six of Section Nine. Camera located at the meander corner of fractional Sections Nine and Sixteen on the 173.09 foot contour, on the left bank of Jaems Bayou, facing North 58 degrees E, showing the Jeems Bayou Hunting and Fishing Club house and buildings.

Q. Mr. Clement, please refer to photograph number five and state what that represents?

A. Reading from the description on the reverse side of photograph number five, we have Lot number
269 two of Section Twenty three and Lot number two of Section Twenty seven. Camera located on the 173.09 foot contour seventy five feet Northeasterly from the west meander corner between sections Twenty three and Twenty seven (1917 survey) facing South seventy degrees east. The C. J. Greene residence is shown, located on the line between section Twenty three and Twenty seven, on land about fifteen feet higher elevation than the 173.09 foot contour. Note the high and precipitous bank in front of the house; the large oak trees at the top of the

bank and the erosion at the base of the oak trees. View taken January 16, 1918.

Q. Now examine photograph number ten, and state whether or not that photograph represents the location of any well situated on Lot seven of Section Ten?

A. Photograph Ten, is a view of the well known as Marshall number Four oil well of the Gulf Refining Company of Louisiana, in Lot number seven of Section Ten. This view also shows the character of the surrounding timber.

Q. I show you photograph marked number thirty eight, and will ask you to state where that picture was taken with reference to the land in controversy?

A. Reading from the memoranda on the back of view number Thirty eight, Section Ten, Kodak located on the line between sections nine and ten, seventeen hundred and twenty feet south of the quarter section corner of sections Nine and ten, on the south side of the Oil City Club house road. View taken facing North twenty five degrees East, showing the road, highland and heavy timber growth, all timber of upland species. View taken April 18, 1918."

Q. Does that photograph represent any land in dispute?

A. All of the land shown, is land involved in this suit.

Q. Mr. Clement, I will call your attention to photographs numbers twenty four, twenty five and twenty six, and I will ask you to state whether or not those photographs were taken along the so called Bristol meander line?

A. They were.

Q. Do they show the character of land and timber growth on each side of the line?

A. Yes sir, typical view of the character of the land and the timber growth.

270 Counsel for Plaintiff offers in evidence photographs marked numbers forty one, forty two, forty three, forty four, forty five, forty six and forty seven, together with the notations on the back thereof.

Same are filed in evidence.

LIONEL L. JANES, a witness for the Plaintiff, being first duly sworn, testified as follows:—

On Direct Examination He Said:—

By Mr. Hunter:—

It is admitted by Counsel for defendants in this case, that the witness Lionel L. James, is an expert Ecologist, in the same class with Dr. Henry C. Cowles, who testified in this case and that he has made an examination of the lands, timber growth and water lines and made the same observations as Dr. Cowles, and that he would corroborate all of the opinion and statements and evidence of Dr. Cowles.

Q. Mr. Janes, where do you live?

A. Dupont, Florida.

Q. What is your occupation or profession?

A. I am an Ecologist, forestry.

Q. Have you had a long experience as an Ecologist?

A. Yes sir, had a lot of experience, quite a number of years.

Q. Were you ever in the Government employ?

A. Yes, sir.

Q. Are you now in the Government employ?

A. I am, temporarily at times.

Q. At the present time are you in the Government employ?

A. Yes, sir.

Q. In what capacity?

A. I have been called here by the Department of Justice as an Ecologist.

Q. Only as a witness in this case?

271 A. Yes, sir.

Q. State whether or not you made any investigation of Ferry Lake in 1913-1914?

A. Yes sir, I made an Ecological survey of Ferry Lake in 1914.

Q. How long a period did that investigation cover?

A. Several months. The examination began November 5th 1913 and terminated April 17th 1914.

Q. At that time, were you in the employment of the Government in any capacity?

A. Yes sir, as Ecologist in the Interior Department assigned to the General Land Office.

Q. State whether or not you were engaged in an Ecological survey of Ferry Lake, at the time that Mr. Arthur D. Kidder, Supervisor of Surveys, was making an examination and survey of that area?

A. Yes sir, I was.

Q. You spent about six months in the work?

A. Yes sir, something like that.

Q. What was the first work that you did in that connection?

A. Well I made a preliminary reconnoiter of Ferry Lake and the shores, also of James Bayou and Clear Lake of the same Township and subsequent to that I made detailed studies of the adjacent up lands on the shore of the lake and the bed of the lake studied that very thoroughly and completely.

Q. Did you keep a record of your studies?

A. Yes, sir.

Q. Did you keep a record of the trees that you examined?

A. Yes, sir.

Q. Is that record shown on any plat?

A. Well I made a chart of the tree study on different parts of the territory on the shore of the lake, and part of those studies are recorded on a series of plats, and the detailed studies were made of the sample plats, at those places.

Q. What course did you pursue in selecting the sample plats, did you endeavor to select places typical of the whole area?

A. Yes sir, the sample plots on the shore of the lake, are typical to considerable areas on the shore of the lake, which are very similar. There is one plot repre-
272 senting one condition, and another plot represent-ing another, but all together all of the plots represent all of the conditions of the lake.

Q. I hand you plats marked Plaintiff forty eight, forty nine, fifty, fifty one and fifty two and I will ask you to state whether or not these plats represent your Ecological survey, as shown thereon?

A. These plats are correct representations of the sample plots made by me on the shore of Ferry Lake, James Bayou and Clear Lake, in Township Twenty North of Range Sixteen west.

Q. I understand you to say that the plots examined by you were characteristic and typical of the whole area, treating them as a whole?

A. Yes, sir.

Q. In what section were these plots made?

A. They were made in different sections, the section is shown on each sample plot.

Q. State whether or not these sample plot selections are shown on the hydrographic and topographic map filed in evidence and marked Plaintiff Exhibit No. 13?

A. Yes, sir.

Q. Will you please designate on that plate the position of the sample plots mentioned by you?

A. Sample Lot number one is in section Thirty two; Sample plot number two is also in section Thirty two; Sample plot number three was in section Thirty three; sample plot number four was in section Thirteen; sample plot number five is in section Ten, sample plot number six is in Section One, all in Township Twenty North of Range Sixteen west, and so stated on the plots themselves.

Q. Mr. Janes, did you make any investigation of Ferry Lake, to determine what was the mean high water elevation of that body of water in 1812 and 1839?

A. Yes, sir.

Q. How did you pursue your investigation to determine the facts in that respect?

A. The shores of Ferry Lake—there are on the shores of Ferry Lake several belts of timber; above the 173.09 foot contour and extending up to about the 180 foot contour, there is a belting of timber which consists of overcup oak, willow oak, water oak, red gum, holly, red haw occasionally some mulberry, white ash, which belt of timber extends all around the lake, except in some
273 exposed situations around the shore of the lake, and below the 173.09 foot contour and down to the 166. 1-2 foot contour, there is a belt of cypress timber which in non exposed places is quite pronounced. In exposed places the cypress timber which formerly grew there has been removed by erosion and the trees washed up on the beach. These two belts of timber overlap or come together at the 173.09 foot contour, on the shores of the lake; the cypress belt below and the oak belt above—Now previous to the existence of the present Ferry Lake, Cypress Bayou, and what is now the present lake was a wooded valley and trees grew from the banks of the bayou clear through the valley along the floor of the valley,

along the side and up on the adjacent up land, and when the waters of the lake came in, they killed the timber clear up to the limit of the extreme overflow, about 180 foot contour, but the territory between the 173.09 and the 180 foot contour was only occasionally overflowed by temporary high water from the lake, therefore on the territory, terrace or platform there came trees that are common to lands that are occasionally overflowed, such as white oak, overcup oak, water oak, red gum. Those trees come in after the lake came in; when the lake came in, also the timber below the 173.09 foot contour was all killed, or practically all killed except an occasional cypress, and the territory between the 173.09 foot contour down to about the 166 1-2 foot contour, or 165 1-2 foot contour, was overflowed a considerable part of the year, but was dry some parts of the year, and upon this belt or territory cypress germinated and grew, after the lake came in, and those cypress grow up to the mean high water of the lake, and between the mean low water mark and the high water mark up to 173.09. Now the flood waters at times overflows the lake and gets up for a few days, possibly a week above the 173.09 foot contour and occasionally to the 180 foot contour.

Q. Mr. Janes, what does this 173.09 foot contour, represent in your opinion, with respect to the elevation of the lake?

A. The 173.09 foot contour is the mean high water mark of the lake and was from the time that the lake came in, until the raft was removed from Red River.

Q. Does that contour represent the mean high water elevation as it existed in 1812, and 1839?

A. Yes, sir.

Q. In your opinion, as an Ecologist, is there
274 any doubt whatever on that point?

A. None whatever.

Q. State whether or not the belting of the trees along that contour was distinct?

A. Yes sir, in non exposed places. The cypress belt is very pronounced also the overcup oak, that belting is very marked, very distinct.

Q. Is it preceptible to the eye?

Q. Now referring to your statement that there is no doubt whatever as to the fact that that contour represents the mean high water elevation, I will ask you to state whether or not, the conclusions as to Ecology are spring or exact?

A. They are exact.

Q. Did you in 1914, ascertain from your Ecologic survey, what line constituted the mean high water mark of Ferry Lake in 1812 and 1839?

A. Yes, sir.

Q. State whether or not the line determined by you, was surveyed by Mr. Kidder?

A. It was.

Q. Does that line represent the 173.09 foot contour, as surveyed by him?

A. Yes, sir.

Q. At the time that this conclusion was reached by you in 1914, was any Ecologic survey made by you with relation to these particular suits?

A. No, sir.

Q. Was your examination conducted with respect to these suits?

A. No, sir.

Q. State whether or not the purpose of your examination was to determine whether the lake existed in 1812, and what the mean high water elevation was at that time?

A. Yes sir, that was the object of the study.

Q. Mr. Janes, are there cypress trees growing in the bed of Ferry Lake today?

A. There are a very few there.

Q. Now where are those trees situated with reference to the shore of the lake?

A. There are a number of cypress trees scat-
275 tered throughout the lake still alive, and some submerged, on the bank of Cypress Bayou, and others scattered about in different places in the lake, isolated and decrepid, and usually spiked top, apparently nearly dead, altogether exhibiting a very poor life condition.

Q. Now referring to the cypress trees growing along the banks of the bayou, were they there when the lake came in?

A. Yes sir, some of them were and have lived through, as the roots of the trees were able to get enough oxigen to live, on account of the circulating of the water, and a good many of the cypress trees growing in Ferry Lake greminated since the lake came in, on the old stumps in the water.

Q. Will you please state how there are trees that germinate on the old stumps?

A. Yes sir, after the lake came in and killed practically all of the cypress in the lake, subsequent to the killing of these trees they rotted off and were broken off by the wind and waves, and then cypress seed floated along on the water and lodged in the crevaces of the stumps and the roots extended down into the ground, so that they germinated and grew from the old stumps.

Q. What have you to say with reference to the most of the trees now growing in the Lake, are they trees that germinated before the lake came in or after the lake came in?

A. The most of them germinated after the lake came in.

Q. Most of the cypress now growing in the lake germinated after the lake came in?

A. Yes, sir.

Q. Mr. Janes, what is the present mean elevation of Ferry Lake?

A. Well, I think that it is about 167 or about that, I do not just know at present.

Q. Approxiamtely that?

A. Yes, sir.

Q. Are there any trees growing on the platform between the 167 foot contour and the 173.09 foot contour?

A. Yes sir, it was formerly covered with a heavy cypress forest and is yet in non exposed places.

Q. State whether or not any of the trees that
276 are now growing along that platform, germinated after the water receded down to the 167 foot contour?

A. Yes sir, the upper part of this platform, since the raft was removed from Red River, has become dry and the drainage conditions are considerably better and you find overcup oak and willow oak growing on that platform. I made a number of studies to ascertain how old they were, and I think that about twenty five years is about the oldest overcup oak found below the 173.09 foot contour, which had come in since the raft was removed from Red River.

Q. Would that show anything in addition to what your studies had already shown, with reference to the 173.09 foot contour?

A. Well, I have not stated the exact connection.

Q. Then what is the connection?

A. After Ferry Lake came in and killed the timber, practically all of it to the 180 foot contour, quite a few years elapsed before the timber germinated between the 173.09 and the 180 foot contour, because the forest that formerly occupied that place, being Post Oak and up land hickory, black jack, was destroyed and a new type come in, overcup, gum and such as those, they were not present

and had to be brought in by the waters of the lake and certain conditions had to prevail satisfactory for germination of these species and it required a few years, for that plateat from 173.09 to 180 foot contour to become forested again by another type of forest.

Q. Mr. Janes, referring again to the sample plots which I showed you a while ago, I will ask you to state whether or not, the result of your investigation, as indicated on the sample plots brought you to the same conclusion with reference to the mean high water elevation of 1812 and 1839?

A. Yes, sir.

Q. Now, these sample plots were on different parts of the lake?

A. Yes, sir.

Q. Different parts of land on the shore of the lake?

A. Yes, sir.

Q. And altogether they represent, as I understand it, typical timber growth conditions, in that locality?

A. Yes, sir, they represent the exact timber growth conditions on the contour, on the elevation shown
277 on the plat, all around the lake.

Q. Now, referring to the property in controversy in this suit, I will ask you to state whether or not you have made a detailed examination of that tract of land?

A. Yes, sir.

Q. State whether or not you examined that tract in 1914, to any extent?

A. Yes, sir, I was over the tract quite frequently in 1914.

Q. Did you later make a particular examination of the land that is involved in this suit?

A. Yes, sir, I made an examination in December, 1917, also in April, 1917.

Q. Are you thoroughly familiar with the land involved in this suit?

A. Yes, sir.

Q. Please state whether or not you made an age count of trees in this area?

A. Yes, sir, I did.

Q. Did you make a memorandum of the trees that you counted?

A. Yes, sir.

Q. Please refer to your memorandum and state the ages of the trees that you counted, and their location?

A. On Lot eight of section ten, I made a study of a post oak stump, approximately one hundred and thirty feet northwest of well number nine, Jeems Bayou Fishing and Hunting Club number nine. This stump represented a tree that had been cut down for several years, and has a diameter outside of the bark of twenty-seven inches, the stump's height was thirty inches, and when the tree was cut it was one hundred and thirty-five years old. The diameter inside of the bark of this tree was twenty-four inches—there are a number of suppressed rings in the center of this stump, that is to say the center core was slow growth, that its growth was suppressed, which by the way we find in a lot of post oak stumps, on lot eight and other lots.

Q. Now, what did that indicate, that central core?

A. It showed suppressed growth, it showed that these particular trees in growing in early youth were beneath and shaded by old forest trees, that were growing near, and continued to grow for a number of years, until the old trees of the forest were removed when this particular tree got free access to the light and air from above, then it put on its normal growth; near the Jeems Bayou Hunting and Fishing Club well number ten, on lot eight, I made a study of a post oak stump, twenty-nine inches in diameter. The interior of

278

this stump had rotted away, but the outer seven inches showed sixty annual rungs and the tree is approximately one hundred and twenty-four years old, or was when cut. The tree has been cut a good many years; I will say in the locality of this stump, there is up land forest, consisting of Post Oak and pine, a number of large post oak trees.

Q. Were those trees of great age?

A. Yes, sir, they are from one hundred and fifty to two hundred years of age, being very large Post Oak trees. The up land adjacent to this well is covered with post oak forest, also black jack, up land hickory, entirely characteristic of up land, that is never overflowed, and these same trees are all descendents of other trees, of the same species that formerly occupied the same situation, and which are intolerant of overflow conditions; lot number nine, section ten, near the Jeems Bayou Hunting and Fishing Club well number eleven I made a study of a post oak stump twenty-one inches in diameter, inside of the bark, twenty- four inches in diameter outside of the bark, and thirty inches high, when cut was one hundred and thirty-two years old. The tree had been cut several years. This stump was two hundred feet northwest of well number eleven.

Q. In Lot nine?

A. Yes, sir, of section ten; now near the Jeems Bayou Hunting and Fishing Club, well number eight, lot number nine, there are willow oak trees there of large size. A willow oak that had been cut several years, with a diameter inside of the bark of twenty-four inches, outside twenty-seven inches, from eighty to nine years old when cut. This tree was very close to this well. In lot number nine near the Jeems Bayou Hunting and Fishing Club well number five, there are a whole lot of large timber, a lot of willow oaks twenty-eight and thirty inches in diameter, at breast high. Near the Jeems Bayou Hunting and Fish-

ing Club well number six, on lot number nine, I studied a Post oak, having a diameter inside of the bark of twenty and a half inches, outside of the bark, twenty-two and a half inches, the stump was thirty inches high and the age of the tree when cut was one hundred and seventy-seven years; I also made a study of a post oak having
279 a diameter of thirty-two inches and its age was one hundred and seventy-nine years when the tree was cut.

Q. That was near Jeems Bayou Hunting and Fishing Club Well Number six?

A. Yes, sir.

Q. On lot number nine?

A. Yes, sir. I will say there is a growth of Post Oak trees right there that are large and uniform in size and all of great age, immediately north and west of the well, averaging a little less than thirty inches in diameter.

Q. Did you make any other studies on this lot?

A. No, sir, except some general observations of the timber of these lots.

Q. What have you to say with reference to the general observation of the timber on the land in suit?

A. On all of the territory above the 180 foot contour, down to the 173.09 contour where it has not been cut, we have quite a heavy forest of Post oak, Black jack, up land hickory and pine.

Q. Are those trees characteristic of the up lands of this region?

A. Yes, sir, characteristic of areas that are high and dry, well drained and never overflows, throughout the forested areas of the south. The Post Oak tree is very prominent on the mountains, on the western exposures and southern exposures where the slopes are steep and the soil is very thin, and the ground gets very hot, post oak and post only are found on those slopes throughout the Ozark region.

Q. Throughout the Ozark mountains?

A. Yes, sir, and black jack is also found in high dry and well drained situations where the soil is thin, in the Ozarks and on the plateaus where the soil is thin. Post Oaks and Black jacks are dry, up land high land timber.

Q. State whether or not the land in suit, was land in place in 1812 and 1839?

A. Yes, sir, all of the land in suit was high dry, well drained and in place in 1839 and in 1812.

Q. I direct your attention to the lands lying west of lots eight nine of section ten, being lots five and six of section nine and I will ask you to state whether or not you have been over lots five and six of section nine?

A. Yes, sir, I have.

280 Q. What are the timber characteristics of lots five and six of section nine, which lie between the land in suit and the lake?

A. Lots five and six of section nine are high and dry, naturally well drained, mostly all above overflow, and the timber where not moved for farming purposes is up land forest and up land timber, consisting of large post oaks and pine trees.

Q. Did you see any number of those trees on these lots which in your opinion antedated 1839?

A. Yes, sir, trees on there one hundred and fifty to two hundred years old.

Q. I call your attention to the land south of lots nine and ten of section ten, being lot number one of section fifteen, and lot two of section sixteen, also lot one of section sixteen and will ask you to state whether or not you examined this area?

A. Yes, sir, I went over there.

Q. What do you say, with reference to whether or not these three lots were also in place in 1812 and 1839.

A. Yes, sir, they were in place at those dates.

Q. Were lots five and six of section nine also land in place in 1812 and 1839?

A. Yes, sir.

Q. State whether or not the land to which I have called your attention, in sections ten and nine, and sections fifteen and sixteen whether they were formed by the recission or reliction of the waters of Ferry Lake, since 1812 or 1839?

A. No, sir, they were not.

Q. I direct your attention to the Warren meander line of section ten and I will ask you to state whether or not you have examined that line?

A. Yes, sir, I have examined the line shown me by Mr. Kidder.

Q. Reestablished by his survey?

A. Yes, sir.

Q. Did you follow that line from any point, if so, from what point?

A. We came out at angle point number sixteen, in the southwest quarter of section ten, at one time, and at other times I came out of that tract at different points, usually identified the angle points.

Q. Are you familiar with the Warren line in
281 section ten, as retraced by Mr. Arthur D. Kidder, Supervisor of Surveys?

A. Yes, sir.

Q. What have you to say with reference to the Warren meander line of section ten, is it correct, or incorrect?

A. If it is intended to represents a meander of the lake, the Warren meander line does not relineate the shors of the lake, or demark the shores of the lake in the southwest fractional quarter of section ten, in other words, there is a large area of land omitted to the west.

Q. Referring to the Warren meander line along the west side of the fractional southwest quarter of section

ten, surveyed by him, I will sak you to state whether or not the timber growth is the same or not on both sides of that line?

A. Generally speaking, it is.

Q. Is there any exception to that statement?

A. The line that traverses lower or higher land and of course the timber changes, the type of the timber changes, but it is usually the same. The line does not demark the water mark or shore line of any body of water.

Q. Any bank or shore line visible along the west side of that line?

A. No, sir.

Q. What is your opinion with reference to whether or not the land in suit and other land omitted by A. W. Warren, from his survey, in section ten, section nine, section fifteen and section sixteen were the same in timber growth, and other characteristics when Warren made his survey, as they are now?

A. Yes, sir, they were.

Q. Mr. Janes, I show you resurvey plat, filed in evideence and marked Plaintiff 8, and I will ask you to refer to the Bristol so called Bristol line, from point "A" to point "B" and then to point "C" and I will ask you to state whether or not you are familiar with that line?

A. Yes, sir.

Q. Has it ever been pointed out to you by Mr. Kidder?

A. Yes, sir, it was pointed out to me by Mr. Kimmel, United States Surveyor, and I have been over the same line with Mr. Kidder, Supervisor of Surveys and Mr Clement, United States surveyor.

Q. Have you followed that line from "A" to
282 "B" and then to "C"?

A. Yes, sir.

Q. What are the topographical conditions along that line, with reference to timber thereon?

A. The entire line traverses up land. The western portion of the line, between angle point number ten and angle point number twelve traverses an old field, but the line is on high land and from angle point number twelve going northeast then to the point "C" the line traverses an up land covered with an up land forest of Post oak, pine, hickory, etc. The topographical features are the same on both sides of the line generally speaking, that is the area is flat on both sides, no indication of a bank or a river or stream.

Q. What have you to say with reference to the age of the trees on both sides of the Bristol meander line from point "B" to point "C"?

A. The trees on both sides of the line are large and old, varying in age from one hundred and fifty two [to] two hundred or two hundred and fifty years. They are old trees. Some have been cut.

Q. Did you have occasion to make any age counts.

A. I do not think that I have any record of any particular age counts on that line.

Q. You are satisfied that the trees are very old, and some as old as two hundred and fifty years?

A. Yes, sir, some very apt to be two hundred and fifty years.

Q. I will ask you to state whether or not the lake is visible from the point "B" on that line?

A. There has been a considerable area of timber cut, southwest of the point "B" and when the leaves are off, the trees and small bushes cleared out, it might be seen in the timber time.

Q. It is a considerable distance to the lake?

A. Yes, sir, long ways—I doubt it.

Q. If that line was intended to represent a meander line, what would you say with reference to its correctness?

A. It is absolutely correct as a meander line.

Q. If it was intended to represent the margin of a lake or water course?

A. It does not represent the bank of a stream or water course.

Q. Is there anything on the ground, in the way
283 of topography or timber growths, that would show that that line was the margin of a lake or stream or other water course?

A. No, sir.

Q. Are you familiar with the land in sections three, four, nine and ten, surveyed by Byron Bradley Bristol?

A. Yes, sir, in a general way, been over it a number of times.

Q. In your opinion, was that land, land in place in 1812 and 1839?

A. Yes, sir, it was.

Q. Mr. Janes, a great many matters I would have gone into with you as a witness, but for the admission made, but I wish you to state what is ecology?

A. Ecology is the science which relates living organism to their environments. There are two kind of ecology, plant and animal ecology. We are concerned in this case with plant ecology.

Q. State whether or not a tree is a living witness of the conditions under which it germinated and grew?

A. Yes, sir.

Q. Given a tree that grows upon a tract of land, especially a large number of trees, can you as an ecologist state the conditions under which they germinated and grew, with respect to whether they grew in water or on high land?

A. Yes, sir, there is, there is recorded in the tissues of the tree, an actual history, and we are able to judge as to the life history of the tree.

Q. Is there anything speculative as to the conclusions that you reach under those circumstances?

A. No, sir.

Q. Now, with regard to the present forests growing on the land in controversy, what do you say with reference to whether that forest descended from a previous forest at that place?

A. In all of the territory above the 173.09 foot contour to the 180 foot contour, the forest has descended from a former forest in the same situation. Below the 1 179 to the 173.09 the forest has come in since the Ferry Lake come in, but the old trees are from ninety to one hundred and twenty years old.

Q. When did Ferry Lake come in, in existence, in your opinion?

A. It came into existence 1877?

Q. Do you mean 1877?

284 A. No, 1777.

Q. Then the forest growing between the 179 foot contour and the 173.09 foot contour came into existence after 1777?

A. Yes, sir.

Q. After the lake came in?

A. Yes, sir.

Q. Was that forest coincident with the formation of the lake?

A. It came in a few years after the lake came in, and the oldest trees go back a few years after the lake came in, and the older trees most of them antedate 1812.

Q. Most of the old trees below the 179 foot contour down to the 173.09 foot contour came in before 1812?

A. Yes, sir, most of the large ones.

Q. Now, what are the characteristics of this forest, or any forest with respect to the young trees and the old trees, are there a greater number of young trees, than of old trees?

A. We have a great many different kinds of forest. We might have a forest with trees of even age, and prac-

tically of uniform size all come in about the same time, and grow along throughout their life time and reach maturity about the same time, in that case we would have an even age of standing trees, and are generally large and if allowed to grow will ultimately be large and practically of a uniform size and height, but this particular forest that we are dealing with is not a forest of even growth or selected forest, but have a forest where the conditions of the trees vary, they vary in size, have seedlings, saplings, poles and trees, of different sizes and ages, trees of various species and of course as the older trees become mature they ultimately die or are blown down by the wind or killed by fire, and beneath in the shade, comes in the younger forest trees, which in turn will become large, old and ultimately die, and their places taken over by the others. That is the history of the selective forest, and in such forest there is a great predominence of the younger trees, and only a few of the trees of the large size and age at one time.

Q. Are there a large number or a small number of old trees on this area?

A. There is quite a large number of old trees
285 in the area above the 180 foot contour, have a typical up land forest, and considerable large number of Post Oak, pine and a considerable number of young trees, a good many saplings.

Q. And below the 180 foot contour what have you to say in regard to the large old trees.

A. There are quite a large number of large trees below the 180 foot contour, between that an 173.09 foot contour. We have overcup oak, water oaks, many nearly the same size.

Q. Are there enough trees growing on the area involved in this suit to enable you to determine with exactness the conditions prevailing in 1839 and 1812?

A. Yes, sir.

Q. The ecological evidence is abundant?

A. Yes, sir.

Q. You are not basing your opinion upon any one or two trees?

A. No, sir, basing it upon the study of hundred and hundreds of trees, and months of study.

Q. Mr. Janes, was this lake at an elevation of 180, mean elevation in 1839?

A. No, sir, this lake never had a mean elevation of 180 feet.

Q. Had the elevation been 180 feet, mean elevation in 1839, when A. W. Warren made his survey, what effect would such an elevation have had on the land included in his survey, with respect to whether or not it would have been submerged?

A. A considerable area would have been submerged. The mean high water mark of 1839, could not possibly have been at 180 for a number of ecological reasons.

Q. I wish you would give them?

A. If the mean high water mark of Ferry Lake had been 180 in 1839 or 1812, there would have been an area above the 180 foot contour which would have been occasionally overflowed in times of floods and freshets in Red River, and this area which would have been overflowed we would have the forest of the overcup oak, willow oak, red gum and other forest trees common to lands which are occasionally overflowed, and we do not find any of these species above that contour, showing that it was never overflowed, and for that reason none of
286 these trees are found there, but on the other hand we find a forest of Post Oak, up land hickory, black jack oak and other trees which are intolerant of overflow conditions, could not possibly have lived there, if overflowed by any lake, if the mean high water mark had been 180. Again, if the mean high water elevation had been 180 in 1812 and 1839, between the 180 foot con-

tour and a stretch far down towards the lake, there would have been a belt of cypress come in immediately below the 180 foot contour, extending down to the mean low water mark, but there is no such belting of cypress below the 180 foot contour, therefore the mean high water mark could not possibly have been at the 180 foot contour, because below the 180 foot contour, we have the over cup, red gun, and below the 173.09 foot contour, we now have the cypress belting of timber, and we would not have had any cypress at all, if the mean high water mark had been 180 foot contour, because the ground would have been covered with water too long each year, practically all the year and cypress would not have germinated there, so that there would be no cypress betwen 173.09 foot contour to the low water mark.

Q. So your conclusion is that the mean high water elevation in 1839 and 1812, could not possibly have been at the 180 foot contour?

A. No, sir, it was not and could not have been the high water mark for many centuries, because above that we have the Post Oak, several centuries old, which are absolutely intolerent of overflow conditions.

Q. You are thoroughly familiar with the tract of land, and the area omitted by A. W. Warren in sections nine, ten, fifteen and sixteen?

A. Yes, sir.

Q. I will ask you to state whether or not, a large portion of that area, is above the 180 foot contour?

A Yes, sir, I think it is, the greater portion of it.

Q. I will ask you whether or not, you can, judging by the timber growth on the land state what proportion of the land is above the 180 foot contour?

A. Yes, sir, judging by the timber, what growth is there, I would say something like three-fourths of the area is above the 180 foot contour.

Q. Mr. Janes, were you ever with the Forestry Service of the Government?

287 A. Yes, sir, I am a graduate of the Forestry School of the University of Michigan, and in 1907 I entered the service for technical training in forestry and did a great deal of work in connection with forestry in this country, and a great many National forests.

Q. Then you are thoroughly familiar with trees, their origin and history?

A. Yes, sir. I was three years at Battle Creek College, also graduated Michigan State Naval College and graduated from the University of Michigan, literary department, also graduated Forestry school, University of Michigan. In the Spring of 1907 I took a technical examination in Forestry and entered the forestry service in July 1907, and was assigned to work in the Rocky Mountains. I did considerable work on the Conina Forest. I also did considerable work in New Mexico, and the National forest in New Mexico, then the Morzano National forest, the Pecos National Forest, the Aline National forest in New Mexico, and this work was done between 1907 and 1910. This work was technical, and ecological and I also done considerable work in the forestry service in Arkansas, in the Ozarks. In 1914, I was appointed Ecologist for the Interior Department and did a great deal of Ecologic work in Arkansas, Louisiana and Florida for the General Land office and also appeared in Court in a number of suits of the Department and testified as an ecologist in the suits brought in the Federal Courts.

Q. Have you had practical experience in forestry?

A. Yes, sir, a great deal.

Q. As well as a technical education, trained in Ecology?

A. Yes, sir.

Q. You understand do you trees from a practical point of view and practical experience in your forestry work?

A. Yes, sir.

Q. Did you make an ecologic examination of Moon lake area in Arkansas, which was involved in the suit of the United States vs. Lee Wilson and Company, that went to the United States Supreme Court?

A. Yes, sir.

Q. You testified as an ecologist in that trial?

A. Yes, sir.

288 On Cross examination he said:

By Mr. Smith:

Q. Mr. Janes, speaking of the tree life above the 180 foot contour, what trees did you mention were there?

A. Black jack oak, Post oak, and short leaf line and up land hickory which are intolerant of overflows, they of course after an interval of ninety years would stand some slight inundation for short time.

Q. Will those trees stand two or three weeks of water overflow in the Spring?

A. No, sir, those trees will not stand that amount of overflow, it would kill them out.

Q. Have you any precise scientific way of saying just how many days overflow they will stand?

A. They will stand, during their resting period, more overflow than when growing, probably for a few days.

Q. Say in January and February, that is their resting period?

A. Yes, sir, commences in December.

Q. I assume then that they can stand more overflow then than when they are in foliage?

A. Yes, sir.

Q. I will ask you, if the science of ecology, has arrived at that exactness that you can say how many days overflow these particular trees can stand, during their resting period?

A. We are more exact in applying weeks, than days.

Q. Then say three weeks or twenty-one days, do you think that you can say with preciseness and exactness that they would not stand the water for twenty-one days?

A. I do not think that they would?

Q. That then is a matter of speculation and theory, bound to be?

A. I do not think that Post Oak or black jack will ever tolerate three weeks of overflow, of course you would have to indicate how much water?

Q. Varying from four inches up to three feet?

A. I do not think that those trees would stand any such submergence.

Q. Well in that though you cannot be accurate, as there is no scientific data showing the number of days they could stand an overflow?

A. I know that they could stand it possibly for a few days?

289 Q. But the number of days you do not pretend to say?

A. No, sir, but less than a week.

Q. You do not know of any growth of that character that has been killed out by a moderate submergence varying from six inches to three feet in three weeks?

A. I do not know of any trees that have survived such a submergence. Those trees will not grow on territory that is submerged.

Q. If the water went over this 180 foot contour for say ten days or two weeks during the year, you are not prepared to say it would kill out that class of trees that you have mentioned, that grow above the 180 foot contour, say that the water was up from ten days to two weeks or three weeks, you are not prepared to say that it would kill out all those trees?

A. It would kill them out if it came every year, but if it only came occasionally, once in a while it would not.

Q. Well now, when we attempt to define mean high water, we get into difficulties—is it not a doubtful proposition to say what is mean high water?

A. No, sir, I think not, for every lake has a mean high water mark.

Q. But to say with absolute exactness one hundred years afterwards it is largely speculative, you could get about what it is, but is it not doubtful, in saying just what was the average high water at that time?

A. No, sir, the mean high water margin one hundred years ago, the contour and vegetation in the district will show it?

Q. How would you define mean high water?

A. Mean high water is the average where the water remains most of the time, about the average of the low and the extreme high water.

Q. In other words then, its if the average between the low water and the high water stages?

A. Yes, sir, where it is most of the time.

Q. So it could have been the average between 166 and 180, and you figured it along there?

A. 173.09, where we have a permanent escarpement, and then above that we have the overcup oak, which comes down to that line, they are not very tolerant of overflows and don't grow below the line, so that above that line the land was well drained and dry, but was occasionally overflowed.

290 Q. So that the mean high water, as we understand it, is the average level of extreme high water and the extreme low water?

A. Well, this happens to be at the average, but it is where it stays the most of the year on the border of Ferry Lake.

Q. You know that in the early Spring, that we have high water in Red River?

A. Yes, sir.

Q. The raft period was no exception, and if the lake was 173.09 most of the year, it was very considerably higher in the Spring?

A. During flood time, that terrace between 173.09 and 180 foot contour was overflowed when there was flood stage.

Q. Mr. Janes, in section nine, as placed on the map of Mr. Kidder there are some improvements, principally the club house of the Jeems Bayou Hunting and Fishing Club?

A. Yes, sir.

Q There is a dock along there, a landing place along the water front?

A. I think there is one there.

Q. You say that there was some of the ground that was in cultivation?

A. Yes, sir.

Q. Those improvements were all made on this disputed area?

A. Yes, sir.

On re-direct examination he said:

By Mr. Hunter:

Q. Mr. Janes, you were asked on cross examination about the possibility of the water having reached the elevation of the 180 foot contour and its effect that that stage on the Post Oak trees growing at that elevation and above that;—I will ask you to state whether or not it is possible for a post oak tree to grow in water?

A. I cannot do so.

Q. What have you to say with reference to whether or not the 180 foot elevation is an impossible hypothesis. with respect the the post oak trees growing on this ground?

A. Yes, sir, absolutely impossible for the 180 foot to have been the contour, during the raft stages, mean high water mark.

Q. Referring to the area of land in suit, I will ask you to state whether or not, it is swamp in character?

A. No, sir, it is not.

Q. What have you to say with regard to the
291 dryness of the soil, whether it is well drained or not?

A. The area is up land and naturally well drained, and the rainfall especially on the surface runs off very rapidly on account of the slope of the land, and the evaporation is very rapid during the Summer and Spring, and all this area is forested and even the water when it is up, is rapidly removed by the evaporation, and the leaves on the ground, make the soil dry, and again the area has a good slope so that the percolation is rapid, and always active as long as there is any ground water in the soil, and therefore the ground remains dry, except a little period during overflow, during the raft period.

Q. For the information of the Court, I will ask you to explain these sample plats, numbered forty-eight to fifty-two inclusive?

A. The first plot is sample plot No. 1, on the south shore of the Lake in section thirty-two, and it is marked Plaintiff No. 48. This plot shows the conditions prevailing upon the shore for some distance back on the up land and down into the water. The mean high water mark of 1812 and 1839 is put on the map as the red line and the figures 173.09 written close to it. The escarpement 180 foot contour is shown by the heavy dark line and at this particular point the ground rises rather rapidly, so that the contour lines, even of a foot are close together. Between 180 and 185 foot contour the lines are five feet in elevation are drawn heavy in order to bring out the top-

ography. Now the forest vegetation on the shore and water is indicated by symbols. We have a certain symbol for Post Oak, one for overcup, one for willow oak, one for water oak, one for Crataegus, one for persimmon, one for water hickory, water locust, joney locust, swamp holly, white elm, wing Elm, mock nut, shagbark hickory, pig nut hickory, planer tree, black willow, bald cypress, willow, red gum, white ask, mulberry, pine, and also symbol representing the undergrowth; coarse drift, fine drift, drift cypress and grass. Also on the same plot are symbols representing old stumps. Now by an examination of the plot, we find that the over cup oak, willow oak, red oak, water oak, swamp spanish oak, crataegus, water oak, water hickory, grow on this land down to the red line, 173.09 foot contour; we find that the cypress, planer tree grow below the 173.09 foot contour. In the timber
292 belt this vegetation is shown by the various symbols. These symbols on the plots show the exact location of the trees that grow on this area. On each of these samples there is a number written in small figures, now in the detailed technical report submitted to the Department of the Interior, the numbers represented on these samples are fully described, as to their Ecologic significance. That is to say on mane of these plots, I cut practically all the trees myself or had them cut in order to ascertain their age, when they germinated and the conditions surrounding their ring growth, from germination to the present time, the length of the overflow and length of the growing seasons and a great many other ecologic features; the particular trees on the sample plots were very carefully located as to position and elevation by the most technical instruments known to science, in nearly every case using the plane table and telescopic alidade to determine the position and elevation of the trees, the ground level at the base of the trees; the in-

strument being handled by United States surveys, in the employ of the Government service so that the data appearing on the plots, for position and elevation of the different trees is absolutely correct. That is true on all of these plots; now we find that there are three belts of timber shown on every plot, and depicted on every plot one belt of timber above the 180 foot contour, consisting of Post Oak, up land hickory, Black jack oak, and one or two species of pine, and the belt of the timber between the 180 foot contour and the 173.09 foot contour which in every case consisted of over cup oak, willow oak, water oak, red gum, mulberry, white ask, red haw, water hickory, cotton wood and occasionally a few other timbers that grow on lands that are temporarily overflowed by flood waters and below the 173.09 foot contour and extending to the lower level, we have the cypress, planer tree and occasional willow. Those grow up to the 173.09 foot contour and cease to grow further up on the land. Now an examination of the plots and an examination of the symbols, show that there are these three belts of timber on the shores of Ferry Lake, everywhere, and these places were selected on the shores to show this belting prevails around the entire border of Ferry Lake. This particular Plot marked Plaintiff 48 extends from an elevation of 160 to an elevation of 187 foot contour.

Q. You are referring to plot marked Plain-
293 tiff 48?

A. Yes, sir. On plot number forty-nine, the same things are shown as on Plaintiff's Exhibit Number forty-eight, and additional other data, to illustrate the escarpement on about the 173.09 foot contour, is shown on a portion of this plat, the contour line apparently encroaching near one end. On Plaintiff's Exhibit Number Fifty we have an area on the southern shore of Ferry Lake in section thirty-three, this being plat of the sam-

ple plot number three, section thirty-three. We have an area which is not exposed to severe wave action, however at the 173.09 foot contour we find a distinct boundary line, between the cypress belt of timber below and the overcup belting above, and at the 180 foot contour line, where there is no escarpement, in this part of the area we have a sharp belting of the Post oak timber coming in immediately at the 180 foot contour and extending on the up land, and the overcup oak and willow commencing on the opposite side and extending down to the 173.09 foot contour. This plat shows then, that where we have not the escarpement the mean high water mark is 173.09, the 180 foot contour marking the extreme overflow. The belting of the timber would be absolutely enough to determine the mean high water mark, with no reference to the escarpement. The belting of the timber independent of the escarpement, is sufficient to determine the mean water mark, and if there was no escarpement, which there is not in this case, the belting of the timber is sufficient to determine the mean water elevation. On Plaintiff's Exhibit 51 we have an exposed situation being shown as sample Plot No. 4, on the eastern shore of Ferry Lake in section thirteen. The area below the 173.09 foot contour, has been pretty well deforested of cypress which formerly grew there. The same is the result below this contour on the borders of Ferry Lake, the cypress having germinated below this contour developed to considerable proportions, but the erosion was so severe, so much soil washed away from the roots of the trees that they were killed and fell over and were washed on the beach. This plot shows these cypress washed on the beach, shows the trees there now on the ground, which grew below the 173.09 foot contour, which now lie above it, having been washed upon the upper portion of the beach, most of them being however not above the 175 foot contour. This plot is of an

exposed situation on the beach, and brings out
294 fairly well the work of erosion, wave action. Plaintiff's exhibit fifty-two is sample plot number five on the eastern shore of James Bayou in section four. The same conditions prevail on the shores of James Bayou, as on the shore of Ferry Lake, the mean high water mark being the same, and the limit of the extreme overflow being the same and having the three belts of timber, the post oak above the 180 foot contour, the cypress belting below the 173.09 foot contour and down to the low water marks and the belt of overcup oak, water oak, willow oak, etc., between the 173.09 foot contour and the 180 foot contour. No matter where the plot was taken on the lake, or no matter where it may be taken now, or at any subsequent time, these same conditions prevail everywhere.

Plaintiff's exhibit number fifty-three, this is sample plot number six on the western shore of Clear Lake, section one. Here we have the three belts of timber the same as shown on Ferry Lake and James Bayou, with the cypress belt below the 173.09 foot contour, the overcup between the 173.09 and the 180 foot contour, coming together at the red line at the contour and above the 180 foot contour another belt of Post Oak, up land hickory, pine, etc. The condition of the mean high water being practically the same condition on Clear Lake and James Bayou as on Ferry Lake.

Q. The waters all merge in Ferry Lake?

A. During the raft period the surface was at the same elevation on Clear Lake and Ferry Lake.

Q. There was a connection between Clear Lake and Ferry Lake?

A. Yes, sir.

Q. You found the mean high water of Clear Lake the same as Ferry Lake?

A. Yes, sir, practically the same apparently.

Q. Mr. Janes, this sample plot marked Plaintiff 53, shows the Warren meander line?

A Yes, sir.

Q. How is that line indicated on the plat?

A. It is indicated by a black line, coming together at the mark "MC" or having a beginning at the point marked "MC" in this plat.

Q. What is the situation of that point with respect to the 173.09?

295 A. It is very close to it practically on the 174 which is just one foot above the 173. foot contour.

Q. Practically coincides?

A. Yes, sir, practically.

Q. What have you to say with respect to the directions of the Warren meander line, in that position with respect to the mean high water elevation of the lake?

A. The Warren meander practically coincides with the mean high water line, I think slightly above in some situations and in some places below.

Q. A practical agreement between the Warren meander line on Clear Lake and the 173.09 foot contour?

A. Yes, sir.

Counsel for Plaintiff offers in Evidence the sample plots identified and explained by the witness, marked Plaintiff's Nos. forty-eight, forty-nine, fifty, fifty-one. fifty-two and fifty-three.

On recross examination he said:

By Mr. Smith:

Q. Mr. Janes, in 1839, there was a lake around this land, in section ten, a navigable lake?

A. Well Clear Lake was in existence, I suppose it was, said to have been navigable.

Q. And the height of the water undoubtedly went to 180?

A. Yes, sir, occasional overflows it went up there.

PROF. FRANK LEVERETT, a witness for the Plaintiff, being first duly sworn, testified as follows:

On Direct Examination he said:

By Mr. Hunter:

Q. Prof. Leverett, where do you live?

A. Ann Harbor, Michigan.

Q. What is your profession?

A. Geologist with the United States Geological Survey, also hold the position of Lecturer on Glazier Geology in the University of Michigan.

296

Q. You are a Geologist working under the direction of the United States Geological Survey?

A. Yes, sir.

Q. In the employ of the Government?

A. Yes, sir.

Q. How long have you been employed by the Government?

A. Thirty-two years, since 1886.

Q. How long have you been a Professor of Glazier Geology in the University of Michigan?

A. Lecturer since 1909.

Q. What experience, what training and experience have you had in Geology?

A. I took an Academic course, in what is known as the Dermak Academy, in Iowa, general training in science then

taught three years studied surveying and become a county surveyor in 1883, and I was teaching surveying, Geology and natural philosophy, then I decided to get a Geological course and one year was spent in Colorado College, at which I took special studies in Geology, with excursions into the mountains around, also a course in assaying, then the next two years were spent in Iowa Agricultural College and I graduated from the Iowa Agricultural College in 1885 BCS. In May 1886 I entered the United States Geological survey and held that position, and hold it still.

Q. Professor, are you familiar with Ferry Lake?

A. Yes, I have been making some studies of it.

Q. Geological studies?

A. Yes, sir.

Q. State whether or not you visited Ferry Lake in 1914, for the purpose of making Geological studies?

A. I did. I was there twice, there in February and again in April.

Q. How long a time did you spend there?

A. About a month in the two trips.

Q. Did you make a thorough examination of the geological data?

A. I think so, I examined the whole shore of the lake.

Q. State whether or not you visited Ferry Lake, subsequent to that, in 1917?

A. I also visited there in January, 1917.

297 Q. You mean January, 1918?

A. Yes, sir, January, 1918.

Q. How long a time did you spend in the Ferry Lake area in 1918?

A. In the neighborhood of ten days, I think that I started the first day of January and was through about the 10th or 11th.

Q. Is Ferry Lake a large body of water?

A. No, relatively a small body. I might say that my work in the United States Geological survey has been very largely on the lake shores, that is the Great Lakes, Lake Superior and Lake Michigan, in tracing the shore lines occupied by the lake sometime in the past and had receded and in that study I had to give attention to what corresponded to mean high water level and extreme high water level so it was that experience that I had on the Great Lakes that led to my being assigned to this particular work here, as my training in that line would be of use in identifying similar features on Ferry Lake, so as to be able to recognize the mean high water stage as compared to extreme high water stage.

Q. What is the size of Ferry Lake?

A. Its head is two miles this side of Jefferson—in the neighborhood of thirty miles in length, and the width at the greatest width is about two miles.

Q. You have had considerable experience then in tracing the shore line, the mean high water mark and extreme high water mark of lakes?

A. Yes, sir, for thirty years.

Q. That is the reason why you were assigned to this work by the United States Geological Survey?

A. Yes, sir, so I understood.

Q. I will ask you to state whether or not there are definite channels of Cypress Bayou and James Bayou extending through this entire Township?

A. Yes. I under Mr. Kidder, with his survey, I sounded this channel with a pole through the lake and across it, and found the position of the channel so as to satisfy myself, from personal investigation, that there is such a channel there.

Q. You found well defined banks of the channel of these bayous?

A. Yes, sir, full now of a mushy substance so that you can ram the sounding rod five or six feet
298 into the mush and slime, whereas on the hard ground on either side, you can only shove it down a few inches, so that you can easily tell when you get to the channel, but the maps exhibited here would not show the full depth of the channel in early days, because there is five or six feet of this slime in there. It is not as deep as it was when the river was through it, not by five or six feet.

Q. Now, referring to the channel of Cypress Bayou and James Bayou, I will ask you to state whether or not these channels have been marked by the government in any way?

A. They are marked on the exhibits submitted here.

Q. Which map do you refer to?

A. Plaintiff's Exhibit 13, hydrographic and topographic map.

Q. Are the channels of the two bayous shown on the hydrographic and topographic map?

A. They are shown in their present stage, deep in certain places and shallow in other places. In section four, through to about the center of section sixteen James Bayou has a more definite channel than from sixteen on to section twenty-two, then it be-than from sixteen on to section twenty-two, then it becomes definite to the point that it intersects Cypress Bayou in section twenty-two. On this map here, where Cypress Bayou comes in, this has definite banks, and the channel throughout the township to the vicinity of Mooringsport, when filled by the back waters from Red River, that made a complete barrier across the lake, at section twenty-five. I might state here the character of the sediment brought in from Red River was a red silt, which the floods of Red River carried in there, and from there west we have a different sort of sediment in the lake, that is from sec-

tion twenty-five west, which is beyond the reach of the red river deposit.

Q. Are the channels of those two bayous marked in any way in the waters of the lake, that you know of, any signals?

A. No stumps in the channels.

Q. But has the Government marked them in any way, the channels through there?

A. I am not aware of any, it may be that the War-engineers may have done so.

Q. You spoke of stumps, do you find any
299 stumps throughout the channel of those two bayous?

A. The stumps are out on the banks, on the high ground.

Q. Are there many hard wood stumps throughout the Lake, or many stumps there?

A. Yes, Cypress largely, a large number, it was a surprise to me to see such a large amount of timber standing.

Q. I will ask you to state whether or not the conditions that you found there, showed it was, before the coming in of the present lake a well drained forested valley?

A. Yes, sir, the definite channel and the old stumps was one indication and the character of the trees on the old bottom land would be another indication, these trees antedating the effect of the raft. Some of them are oak, and of course they died when the raft influence set in.

Q. What is the date as to that raft influence?

A. I would say that it began in the latter part of the eighteenth century.

Q. What is the cause of the present lake?

A. The reason that the Lake did not drain right out, as soon as the raft was removed, was the sediment placed across the mouth, a bar placed across the mouth of Twelve

375

Mile Bayou, that goes into Red River near Shreveport, and it has to excavate a channel in that sediment before it can drain the lake and it has been making a channel that has reached back to the old bed of Soda Lake, and it is working back through the bed of Soda Lake today, a good many feet per year.

Q. Now, I would like to know whether the great raft in Red River formed the present Ferry Lake?

A. Yes. Ferry Lake, came into existence during the great raft, because of the flood stages.

Q. Why did the great raft cause the formation of Ferry Lake?

A. It filled the deep channel of Red River to such an extent that the water approached the high level, and had to go around through the bayous and low ground next to the bluff just below Mooringsport and in that way backed up into the lower end of this Cypress Valley.

Q. This forested valley, forming the present basin of Ferry Lake, was it or not connected at that time with Red River by bayous and other water courses?

300 A. Yes, there was Twelve Mile Bayou and Cypress Bayou.

Q. The existence of the raft in the river caused the waters to back up into these bayous and into this basin now occupied by the Lake?

A. Yes, sir, the building of the sediment across where Cypress Bayou comes out of Red River, filling up Twelve Mile Bayou, Twelve Mile Bayou reaching to the lower end of Cypress Bayou and building the barrier across that, and that is gradually being cut out, and brings back the preraft conditions.

Q. Did you make any investigation to determine the condition of Red River, in the raft period, have you any historical data, or reports?

A. I had the Freeman-Curtis report, and with that in hand I visited the locality and latitude mentioned by them, as the place that they returned ahead of the raft into the open river, and I located that at the mouth of Willow Chute.

Q. I show you plat marked Plaintiff Exhibit No. 26, and I will ask you to examine same and explain the nature of your work and the result of your examination?

A. Well, at this point, connection of Willow Chute, shows a latitude of 32 degrees forty minutes and ten seconds north. I found where this bayou connects with the old River channel, which is now abandoned. There is the old river channel. This map was constructed by the engineers for my use.

Q. Now, the map which you state was constructed by the Surveyors for your assistance was marked 'topographic map of Red River at the mouth of Willow Chute'?

A. Yes, sir.

Q. Mr. Spofford was the Surveyor?

A. Yes, sir.

Q. Now, this other map on this same sheet is 'map of the route of the Freeman-Curtis expedition of 1806'?

A. Yes, sir.

Q. The two maps are shown on the same sheet?

A. They are.

Q. And it is marked Plaintiff No. 26?

A. Yes, sir.

Q. That shows the route the expedition took?

301 A. The expedition describes the courses through all of these passages and expanse of water before they came into the open river and here is this old channel which comes around here and here is where they come out and they give the latitude of 32 degrees thirty nine minutes and forty-two seconds north. That is where the Bayou they were in came out into the

open water of the river above the raft. They came in at this point and that latitude agrees within a very few seconds of this observed latitude taken by the surveyors which was 32 degrees 40 minutes and ten seconds and the Freeman-Curtis expedition gave the latitude as 32 degrees, thirty-nine minutes and forty-two seconds north, and comes within a minute and a half of the latitude.

Q. The point on that map marked 'Map of the Route of the Freeman-Curtis Expedition of 1806,' where the latitude is given as 32 degrees thirty-nine minutes and forty-two seconds, is the point where the arrow points, agrees as I understand it with the latitude shown on the map made by the Surveyors in 1914, the point of the arrow which is marked 'Observed latitude 32 degrees, forty minutes and ten seconds North'?

A. Yes, sir, and the difference between that latitude and the 32 degree, thirty-nine minutes and forty-two seconds is only the fraction of a minute, and is as close as two latitude determinations can be made.

Q. They are practically the same?

A. Yes, sir.

Q. Now the point shown on the map made by the Government Surveyors indicated by the arrow, where the latitude was observed, is the point which you determined to be the same place where the Freeman-Curtis expedition came into Red River?

A. Yes, sir.

Q. Then the river?

A. Yes, sir, the same latitude as the channel there to indicate the place and there is no question in my mind whatever that that is the place this expedition returned to Red River above the raft in 1806. When the raft had worked up Red River, as far as the mouth of Twelve Mile Bayou, it exerted an influence on Cypress Bayou that

302 was running and discharging into the Red River below, so that it did not have to get to the same latitude as Mooringsport, before it exerted an influence.

Q. Professor, examine the map marked Plaintiff 25, and state whether or not the bend in Red River is indicated on that map, with respect to the place where you say the Freeman-Curtis Expedition returned to Red River?

A. They are.

Q. The place marked on the map 'River?'

A. Yes, sir, where the Willow Chute and old river channel is shown where the connection is made.

Q. They returned to the river there?

A. Yes, sir.

Q. What similarity is there between the bend of the river shown on Plat marked No. 25 and the map of the Freeman-Curtis Expedition?

A. There is a close similarity, and you can identify the curve of the present river with the curve there.

Q. What have you to say with reference to the bend of the two curves, up to the top on both maps, whether there is a similarity?

A. Yes, sir, there is a similarity that can be recognized by anyone, and very remarkable for Red River to maintain such a uniform course for such a long distance for over one hundred years because you people know how it shifts, in a man's life time changes several times, so it is rather remarkable for such a long space, so that it is easily identified and there would be no question with anyone familiar with that country that this is the point of their return.

Q. State whether or not in your opinion, and from your knowledge of the situation as it prevails at that point, the Government surveyors have corerctly shown the configuration of the river at that place.

A. Yes, sir, a very good map of the configuration.

Q. Do you or not believe that they have reproduced on the map the conditions that existed when Freeman-Curtis made their expedition?

A. On that plat they copied the map accurately of the Freeman-Curtis expedition, and show the present condition. They represent the condition as it was in 1914, on this map marked Plaintiff 26. That covers both maps, the map of the Freeman-Curtis expedition is
303 copied, showing the conditions in 1806, and on this same exhibit they show the conditions exist in 1914.

Q. What does the map marked Plaintiff 25 show with respect to the bends of the river?

A. That shows that the old channel corresponds with this on the small scale, but it brings out the curve of the river.

Q. As it exists today?

A. Yes, sir, marked old channel, and shows the present condition in regard to the Bayou.

Q. How does that compare with reference to the conditions existing in 1806?

A. It shows just how much change has occurred in certain parts, showing the abandonment of the old channel, otherwise the conditions are the same.

Q. Otherwise the conditions are the same?

A. Otherwise the river occupies a remarkable large part of the old course.

Q. Have you read the report of the Freeman-Curtis expedition offered in evidence?

A. I have.

Q. Did you make any investigation relative to that report, in regard to water elevation in Red River, at the mouth of Willow Chute?

A. My computation shows you the correspondence of the mean high water of Ferry Lake. We find on the top of the bank 182 to 183 as it varies a little, about a foot and the Freeman-Curtis Expedition stated the bank was twelve feet high, so that the level of the river at the time that they came in, at that point would have been practically 170 feet, being about the same latitude as Mooringsport would indicate the level of the river was in harmony with the level of Cypress Bayou—In my report to the Secretary of the Interior I stated that the raft worked headward and this was liable to cause a rise of a foot or two feet. That will be better explained by the Ecologic determination, hardly within the range of Geological evidence but I put it in as three feet, where he came into the river is within three feet of the level that Mr. Kidder and the Ecologist agreed upon as mean high water of Ferry Lake, which was an essential agreement.

Q. Would these banks be washed down in the course of seventy-five years?

A. The whole channel is well preserved. The
304 difference would be very slight, a matter of a few inches.

Q. What did the Freeman Curtis Expedition report with reference to the height of the bank?

A. They reported that the banks were twelve feet in height, at the time at the point where they came back into the river, and that the river was thirty-four feet in depth at that point. They also mentioned another very insignificant thing, and that was that the high water level was ten feet above the stage which they return, showing the high water of Red River was 180 feet at the time that they came back, which agrees very closely with the 180 as the high water stage of Ferry Lake.

Q. What note did the Freeman-Curtis Expedition make with respect to high water mark?

A. They noted the marks on the trees, the mud and slime of the high water stage. They came in June and there had been high water a little before that, and it was ten feet above the level of the river at the time that they came in.

Q. How do you compute the water elevation of Red River at the mouth of Willow Chute, was 170 feet at the time that the Freeman-Curtis expedition returned to Red River?

A. I computed that from the map made under Mr. Kidder's direction, as the top of the bank was 182 feet, the bank twelve feet, take twelve from 182 leaves 170 as the high water mark, and the ten feet added to that gives 180 feet, which is an essential agreement with the high water mark of Ferry Lake; the high water mark was ten feet above the stage of the river.

Q. Are you familiar with the tract of land involved in this suit, lots eight, nine and ten of section ten?

A. I was there in 1914 and again in 1918.

Q. What is the character of that land, whether up land or not?

A. It is up land in its character, with sufficient slope for the rain water to run off, without any artificial help.

Q. There are no basins, ponds or marsh on it?

A. Yes, sir.

Q. Did you make any investigation of the border of Ferry Lake, to determine from Geological data the mean high water mark of Ferry Lake, the mean high
305 water elevation of Ferry Lake in 1812 and 1839?

A. Yes, I followed the shore clear around every section bordering on the lake, using Geological rather than Ecological evidence because there is a bank formation on the lake of the mean high water stage, that is recognizable. That is what Geology would embrace more than anything else. In a hundred years the lake has

been in there it has made marks that can be distinctly traced. You could cut out the forest and tear out Mr. Kidder's post, and you would still be able to follow that line. I am not depending upon these posts nor upon the class of vegetation to locate the contour, but depending upon the topographical features, the washing of the waves for a greater part of the year, the same that occurs with all bodies of water.

Q. Now referring to the topographical features, I will ask you to state whether or not you can identify from that mark or feature, without relation to a survey and without the assistance of a surveyor or an ecologist the mean high water elevation of the lake?

A. Yes, sir. I am in the habit of doing that in other takens, often in a cultivated country, farm land, and we have no ecological data and I was surprised to find in this lake, although a small lake that it had had time enough to make definite marks.

Q. What is that mark?

A. A little deepening of the slope at the place where the waves beat so much of the time, the waves coming up against the bank, and as it comes up and goes back drags material out in the lake and produces certain proofs that a Geologist will recognize as certain and the under toe, that takes away the dirt from the trees that the Ecologist has spoken of.

Q. Is that bank a well defined escarpement?

A. Yes, sir.

Q. Is it practically continuous all around the lake?

A. Yes, sir.

Q. What is the significance of that escarpement, what does it indicate to you as a Geologist?

A. It indicates that that is the level at which the waters have been doing their work the most of the year.

Q. State whether or not that mark or escarpement represents the mean high water elevation of the
306 lake in 1812 and 1839, or whether it represents the present mean water elevation?

A. It represents the elevation during the time of the raft period and the present elevation is a little lower.

Q. The present elevation is lower?

A. Yes, sir.

Q. Do you know, historically speaking, when the raft was removed?

A. I think in 1874.

Q. And the escarpements to which you refer, represents the mean high water elevation of the lake prior to the removal of that raft?

A. Yes, sir.

Q. In your opinion as a Geologist, is that escarpement the mean elevation of Ferry Lake, as it existed in 1812 and 1839?

A. It is.

Q. Are you familiar with the lines established by Mr. Kidder, on the ground, which represents, according to his survey, the mean high water elevation of 1812 and 1839?

A. I am familiar with the stakes set. The line that I follow is the line of the wave work here and there comes up to his stakes. I know that those stakes are set over the top of this bank.

Q. How does the line, which you found as a Geologist represent the mean elevation, agree with the line established by Mr. Kidder?

A. Very closely. The point he established on the shore agrees with the line I can trace on the ground, and in tracing it I come up to the angle points where the stakes are set. Where the stakes were set I found was near the top of this bank, that had been cut by the lake at mean high water elevation, 173.09.

Q. The elevation which you established from Geological data, being the mean elevation of the lake in 1812 and 1839, was the 173.09 foot contour?

A. Yes, sir. Those stakes are set on that contour. I recognized those stakes as the mean high water elevation.

Q. Those were the stakes set by Mr. Kidder?

A. Yes, sir. I might say that I had nothing to do with the setting of the stakes at any time in 1913 or 1914. My assignment to this work was subsequent to that.

Q. Did your investigation show that these stakes were set approximately on the 173.09 foot contour, approximately at the mean water elevation?

307 A. Yes, sir, I did not know the altitude but it agrees with the topographical features of mean high water.

Q. Did you find anything on the ground, any marks any Geological evidence to show the limit of extreme flood level of Ferry Lake since the raft came in, since 1812?

A. I could not state how high it reached. It reached 180 foot contour, and may have been times that it was above that without leaving its effect.

Q. You found no evidence of the flood reaching higher than one hundred and eighty feet?

A. No, sir, saw no direct evidence on the ground.

Q. Did you make an examination of the soil within the area involved in this suit?

A. I gave attention to the soil all through it, the character, color, texture, etc. The land is compact clay soil, had a reddish color, shows oxidation, that would indicate acerage action of atmosphere, down to the 173.09 foot contour.

Q. The character of the soil down to the 173.09 foot contour is such that indicates that it has had average sun light, and atmosphere?

A. Yes, sir.

Q. State whether or not from your examination of the soil, of the land in controversy, whether it was formed by accretion since 1813 or 1839?

A. No, it is not soil formed from accretion, it is the old formation in the process of being cut down, lowered by the ordinary surface wash.

Q. State whether or not the land in controversy was formed by recission or reliction of the waters of Ferry Lake since 1812 and 1839?

A. It was not.

Q. Why was it not?

A. Well it is old formation, its formation dates back into the past ages, is not alluvial formation.

Q. Then it is oil soil?

A. Yes, sir, old soil.

Q. What have you to say whether or not the
308 land involved in this suit was land in place in 1812?

A. I think it was down to the 173.09 foot contour.

Q. From your knowledge, as a geologist, and from your knowledge of the land in suit, state whether or not this land, in your opinion was covered by the waters of Ferry Lake and was a part of the bed of Ferry Lake in 1812 and 1839?

A. It is not properly the bed of Ferry Lake, anything above the 173.09 foot contour was not properly classed as the lake bed. I might say that on the Great Lakes we have the same conditions back of the beach, which is called the shore, down to which the water line runs, but the waves rise to a considerable height, for instance around Lake Erie gets as high as twelve feet during storms.

Q. In the lakes does it remain at the high stage very long?

A. On the Great Lakes it is only during storms and high water periods, very often for several months, whereas

on the small lakes like this, it would be only for a few days.

Q. Now let us take the period, the year 1849, I will ask you to state whether or not in your opinion as a geologist, those lands, and I now refer to the land in controversy, were all above mean high water?

A. I think that that was the year of one of the floods, of a very considerable stage here at Shreveport, 35.9 here at Shreveport. I looked up that data.

Q. Now, referring to the condition of this land at that time, I will ask you to state whether or not in 1849, the 173.09 foot contour as established by you, represented the mean water elevation of the lake?

A. I think it did in 1849.

Q. Now any conditions that may have occurred from floods, that was temporary in character?

A. Yes, sir, very temporary.

Q. Was or was not all of the land in controversy, at that time above the 173.09 foot contour?

A. The average, as I say I traced that line 173.09, there is no long standing of water at that level.

Q. You found that with respect to the mean high water mark?

A. Yes, sir.

309 Q. I believe that you have stated that there is no marsh or swamp on this ground?

A. No, sir.

Q. Nor any condition requiring artificial drainage?

A. No, sir.

Q. State whether or not the ground slopes down to the 173.09 foot contour?

A. It does.

Q. The slope is sufficient to create drainage without artificial drainage?

A. Yes, sir, so that the water does not stand.

Q. Now, those conditions prevailed back as far as 1812 and a date previous to 1812 and 1839?

A. Yes, sir, I do not think the lake has been higher than 173.09 mean high water.

Q. Referring to the conditions which prevail today, with respect to the lake, I will ask you to state whether the lake has receded from the 173.09 foot contour?

A. It went down when the raft was removed about seven feet, six or seven feet.

Q. When the raft was removed?

A. Yes, sir.

Q. 166 is about the present elevation?

A. The present elevation after the dam was built is 167.

Q. As a result of the dam?

A. Yes, sir, it was below 167, but the dam caused it to be raised a little over the mean high water stage.

Q. You have stated, speaking from historical information that the raft was removed about 1874—you had previously stated that the lake was created by the formation of the raft in Red River, now when the raft was taken out of Red river, why didn't the lake run dry?

A. Because the sediment had built a barrier across the mouth of the bayou where it goes out into Red River bottom, below Mooringsport formed a barrier, in that way created a basin, as the elevation of this barrier was about 164 in Soda Lake bed. The bottom of this barrier is below 160. The Ferry Lake bed is below the 160, so that this basin held the water as it had to go out over

310 that 164 foot contour.

A. As I understand it, the action of Red River in depositing the sediment, dammed up the outlet of Ferry Lake and empounded the waters of Ferry Lake, and prevented their going out?

A. Yes, sir, and in Soda Lake, which is flat, where the barrier is formed, so that the water accumulates in flood stages and of course it takes some time to run off, but it does disappear from Soda Lake during the dry seasons, so that Soda Lake is dry at times.

Q. I will ask you to state whether or not the dam formed by the action of Red River, is well defined, and can be seen and have you examined it?

A. It can be seen best there where the water is deep in the lake and where there is no depth at all below the dam where it spreads out.

Q. What is the color of the soil in this barrier?

A. It is red.

Q. How does it compare with the soil of the bed of Ferry Lake?

A. It is a different color, it is the Red river silts, and the soil of the bed of Ferry Lake is of a greyish color. I took samples of it and had it examined, it is of a pale greyish color.

Q. When was this deposit of sediment made, during the raft period?

A. Yes, sir, during the raft period.

At this point the taking of testimony was discontinued until 10 o'clock May 1st, 1918.

May 1st, 1918, at ten o'clock all parties being present, the taking of evidence in the above cause was resumed.

PROF. FRANK C. LEVERETT, a witness for the Plaintiff being on the stand his direct examination was resumed:

By Mr. Hunter:

Q. I believe that you stated that the formation of the barrier across the outlet of Ferry Lake empounded the waters of Ferry Lake?

A. Yes, sir, and that is why the lake did not drain out immediately after the raft was removed.

Q. You also mentioned during your testi-
311 mony the action of the rapids of Twelve Mile Bayou working headward?

A. Yes, sir.

Q. Please explain that feature in a general way?

A. In a general way I will state that the stream makes quite a decent in DeSoto lake and is cutting a trench a trench in Soda Lake into the lower part of this lake, and that there is a considerable declivity and it is known as the rapids, a fall of several feet in the fraction of a mile, and that it is working headwards quite rapidly in the neighborhood of five hundred feet in a year, over a foot a day average, in its headward progress.

Q. What effect does the rapid working heardwards of that cutting away have upon the receding of the waters?

A. It has no effect until it cuts through this barrier, and it is rapidly cutting back through the barrier, in fact over a foot a day average.

Q. State whether or not a concrete dam has been built at the foot of Ferry Lake, to hold the water in Ferry Lake?

A. There has.

Q. Will that dam permanently prevent the recission of the waters?

A. It will stop the recission at the place where it is located. This cutting away of the sediment will go on until it reaches the foot of the dam.

Q. Then the water will be permanently held in the lake?

A. Yes, sir, that is the intention in putting the dam there.

Q. Was the dam that you refer to completed in 1914?

A. It was not quite completed?

Q. It has since been completed?

A. It has.

Q. What was the elevation of the lake in 1914?

A. I cannot say what the elevation was at that time, the dam was in process of construction.

Q. Do you know what it is now?

A. I think it is according to the Cario Datum 188.76 and take the 27 feet from that, which makes it 168.49, the height of the dam, and I wish to call attention to the fact that the height as given by Lieutenant Graves of Dallas is 168.49.

Q. What Datum does the elevation 168.49 refer to?

A. Well the Cairo Datum, and deduct it from
312 the height given by the Army Engineers is 168.49.

Q. What datum do the Army engineers give, or on what datum do they base their figures, the Cario or Biloxia?

A. The Army use the Cario and the difference between the Cario and Biloxie is 20.27.

Q. So that the figures that you give of 168.48 represents the Biloxie datum?

A. Yes, sir.

Q. What damum does the 173.09 foot contour refer to?

A. That refers to mean gulf level at Boloxie.

Q. So that the present elevation of the dam is four or four and a half feet lower than the 173.09 foot contour?

A. Four and 6-10 feet exactly according to these figures.

On Cross Examination he said:

By Mr. Smith:

Q. Prof. Leverett, what would you say, from your observation as a Geologist, about the height of the water that you have given, ever having been at 180, 183 or 185 or 188, in the locality of Ferry Lake, since the formation of the raft?

A. I would not be able to deny but that it was up to the 180 foot stage during flood stages. I have never seen any evidence of it having been above the 180 foot mark, but I would not be able to say it might not have been higher.

Q. I will ask you to examine the report of the Chief United States Army (showing witness Report Secretary of War 1893) and I will ask you to calculate the height of the water at Mooringsport in 1892, according to the report of the United States Army—you have made the calculation on the basis of the Elevation of Cairo at Mooringsport in 1892 as 63.62 meters?

A. Yes, sir.

Q. What was then the stage of the water at Mooringsport at that time?

A. 188.49.

Q. In 1892?

A. Yes, sir.

Q. In 1890 the report shows the elevation of the Caro datum as 63.13 meters, that figures out 186.8,
313 that is approximately correct?

A. Yes, sir, I would say that it was.

Q. In 1882 at Stormy point, do you know where Stormy point is?

A. No, sir, I do not think I do.

Q. It shows the figures as 183.8 that is approximately correct?

A. Yes, that may be correct.

Q. From your science you can only give the relative elevation of the water, you cannot say accurately—you cannot say that the water did not go a certain height at a certain time?

A. No, sir, that is a matter of observation, of course the temporary marks would be effaced.

Q. You would say that two or three weeks would be temporary?

A. I presume not over three hours at the stage you speak of as the crest of the wave would be reached and then within a very few hours it would recede.

Q. How much would it recede in a few hours?

A. That would depend upon circumstances.

Q. The water would approximately be at this level anywhere from three or four days to three or four weeks?

A. I notice by referring to the records of the height of the water at Shreveport, from the year 1874 to 1917, that the water was at this high stage for only one day at one time, two days another and occasionally three days, but at no time at the flood stage more than three days here at Shreveport.

Q. That was the maximum height?

A. Yes, sir, and it did not hold more than three days.

Q. You have no way of telling how fast the recission was?

A. No, might have been slow or rapid according to circumstances.

Q. And must have varied with the years?

A. Yes, sir.

Q. Well, with the water at 188 at Mooringsport, all of that country about sections nine and ten would have been under water?

A. All except that that is above the 188 foot contour, be a very small amount above.

Q. With the water at 186 would be most of it under water, from your recollection of the topography?

314 A. I think there would be an area at the Jeems Bayou Fishing and Hunting Club house, if it was sixteen feet above the 173.09 foot contour, that would make it 189, so it would scarcely cover the ground that the club house is on and a strip there at the Club house would not be covered.

Q. You are referring to the club house of the Jeems Bayou Fishing and Hunting Club?

A. Yes, sir.

Q. I will ask you to examine Plaintiff's Exhibit 10 and look at the contour there, and with the exception of a little tongue over the 190 foot contour, would not practically all of the so-called land go under water if the elevation of the water was 188?

A. I have just stated that the club house is sixteen feet above the 173.09 foot contour, therefore that would make it 189 feet, so that the club house itself would not be under water at 188 foot level and I suppose that there would be a strip there from the club house out of the water.

Q. I will ask you, if you did not notice that the club house is built on the highest peak in this omitted land?

A. On the crest east and west and north and south the land is nearly level.

Q. And the contour map shows that plane to be 185?

A. Yes, sir, above the 185 foot contour.

Q. It only gets to the 190 foot contour in the northeastern part of the omitted land?

A. Yes, sir.

Q. The great majority of the land, according to Plaintiff's Exhibit 10 would have been under water, if the elevation was 185 or 186?

A. Yes.

By Master:

Q. In this connection referring to the records of the crest of the water, don't the records show the rate of recission of the water, don't the guages show that correctly?

A. Guages established here at Shreveport, and that data can be obtained.

315 By Mr. Smith:

Q. Professor Leverett, during the raft period of Red River, when the waters would get up to the high stages, would it not recede very slowly?

A. Yes, I would think it would.

Q. You have no data to show the height of the water in 1839?

A. No, I have no data on that year.

Q. Absolute available in the records?

A. No, sir.

Q. In going through the various reports you did not calculate the various stages of high water?

A. No, sir, I had no reason for making that calculation at the time but I was familiar with the reports at the time that I made my report to the Secretary.

Q. Your examination now of those reports shows that in 1866 at Post Caddo, Texas, that it was approximately 184?

A. Yes, sir.

Q. In 1874 at Albany Point, it was 180?

A. Yes, sir, I know where Albany point is.

Q. It is south on Ferry Lake?

A. Yes, sir.

Q. Really lower?

A. Yes, sir, a little south, ought to be a little lower.

Q. Stormy point, do you know where that is?

A. I do not know it by that name.

Q. Look—the old boat landing 183.8 and in 1890 at Mooringsport 186.8—Mooringsport as you figure it 188.4?

A. Yes, sir.

On re-direct examination he said:

By Mr. Hunter:

Q. The records about what you have been asked, relate to high water elevation, what is called flood waters and not mean water elevation?

A. No, and would have no bearing on this case, no more than the waters covering a plantation along Red River.

Q. You have been asked some questions relative to the records of the waters of Ferry Lake, the records being taken from a large book, now those records relate to high flood stage, do they not?

A. Yes, sir, high level of the water in flood stage.

Q. You have not testified from the records
316 in the book in regard to mean water elevation, have you?

A. I do not think I have.

Q. You have stated that you found along the shores of Ferry Lake a well defined bank, which in your opinion as a Geologist is the mark of the mean high water elevation of Ferry Lake and was the mean high water elevation of Ferry Lake in 1812 and 1839?

A. Yes, during the raft period, the mean high water level was 173.09.

Q. Was that mean high water elevation the same in 1812 and 1839, I refer to the mean high water?

A. It was practically the same.

Q. You were asked with reference to the possibility of the flood stage reaching as high as 188—you found no evidence on the ground of any such flood stage, did you, since 1812?

A. Nothing up to 188. I do not dispute the records that it reached that, but I saw no evidence on the ground, that would in any way negative the official records.

Q. You found no evidence on the ground, as a Geologist, showing any such elevation of 188 feet?

A. I do not think any evidence would be made by just a temporary overflow, that a Geologist could recognize. The water would have to be at the mean high water level long enough so as to make definite marks, so that a Geologist is certain as to those marks.

Q. And it has made definite marks, as I understand your testimony at 173.09?

A. Yes, sir, certain bank at the 173.09 foot contour.

Q. Professor Leverett, are you familiar with the Warren meander line along the fractional Southwest quarter of Section Ten, as surveyed by Warren and reproduced by Mr. Kidder.

A. Yes, sir, I have been over it with Mr. Clement, a surveyor.

A. Did Mr. Kidder, or Mr. Clement, or both of them show you the meander corners?

A. Yes, I have been at each of these meander corners.

Q. I refer you to supplemental Topographic plat marked Plaintiff 10, and I will ask you to state whether or not you have visited the meander corners shown on that plat, all or any of them, and if you have not seen all of them designate the meander corners that you have seen?

317 A. I have seen sixteen, fifteen, fourteen, thirteen; I have also seen ten and six.

Q. Have you seen sufficient meander corners and are you sufficiently familiar with the Warren surveyed area in Section Ten, to state what effect an elevation of 180 feet would have had on the lines run by Warren?

A. That would have put a good part of the shore of the land in Section Ten under water, in the Southwest fractional quarter of Section Ten.

Q. An elevation of 180 feet would have put most of it under water.

A. Yes, an elevation of 188 would have put all under water except the North end.

Q. A small area in the North end?

A. Yes, sir, a few acres.

Q. Now, when you referred to the Club house, of your cross examination I will ask you to state whether the club house that you mentioned was the Club house of the Jeems Bayou Fishing and Hunting Club?

A. It was.

Q. On lot six of Section Nine?

A. It was.

Q. You stated that that Club house is located on what contour?

A. Sixteen feet above the 173.09, which makes in 189.

Q. 189?

A. Yes, sir, mean Gulf Level.

Q. Professor, a while ago I asked you whether or not you had visited the meander corners along the Warren line of fractional Southwest quarter of Section Ten, and you referred to certain figures on the plat, those are the angle points, instead of meander points?

A. Yes, sir. I understand so.

On Re-Cross Examination he said:

By Mr. Smith:

Q. Professor, we have had some trouble defining mean high water, you mean average water of the lake?

A. No.

Q. Then what are we to understand by that
318 term?

A. This lake it would be the bank full condition of the lake.

Q. Well, what science enables you to work out where the average low water was of this lake, during the raft period?

A. Where the water is off I can find the banks. There is a little bank at that level, low water stages, and the low water was very near where it is now.

Q. Now, what was that low water level during the raft period, was it about where it is now?

A. About where it is now.

Q. 166?

A. Not far from 166. I cannot state positively, but the point is this, the lake makes a mark at extreme low water, at low water every year for one hundred years it would produce an effect and I noted there was such an effect, and with the mean high water stage, that holds for a long period there is a more definite bank.

Q. If this lake, the mean low water level was 166 and it would reach a height of 188, and it would do that several times in a period of twenty years, the land contiguous to the lake would be of practically no value?

A. No more so than the average Red River lands, on the same basis.

Q. The plantations of Red river are all protected by levee—were protected originally by the natural levee and were subjected to periodical overflows, during

extreme high water, then the artificial levees were constructed—you would say from your observation and investigation that with the raft in Red River and the raft conditions, that 173.09 would be the mean high water and 166 low water, during that period?

A. Yes, sir, in dry seasons it would be down to 166.

Q. Well your investigation on that account, will they be absolutely accurate, or relatively correct?

A. Yes, sir, relatively correct. It is not as accurate as the mean high water is, because that was marked with a definite mark, it is the most definitely marked on the shores of a lake or a river, and when you say a river is at bank stage, that is what I am talking about as mean high water of the lake.

A. It is more or less hazardous about the term "Bank full stage"?

A. I think that everyone recognizes that.

319 Q. Now they speak of stages that can be absolutely determined, but when you attempt to work it out, it is more or less guess work?

A. No, sir. I think everyone agrees as to what is meant by bank full of the river, means where it is stable, and it is the best marked line. I think no surveyor or citizen would question where "bank full" condition would be.

On Re-Direct Examination he said:

By Mr. Hunter:

Q. Professor Leverett, if the area above the 180 foot contour had been overflowed at any point and the water had remained on the land any length of time, state whether or not a terrace or platform would have been formed above that 180 foot contour?

A. I would have to be a considerable length of time, considerable time to make one that would stay a year or more.

Q. If the water had gone to such an elevation above the 180 foot contour, it would not have left any terrace or platform, unless it had remained on the ground a considerable length of time?

A. Yes, sir, would have to remain there some time to make any definite marks.

Q. Suppose that the water stage was above the 180 foot contour for two or three weeks in any one year, would that leave such a terrace or platform?

A. No, would hardly make a beginning.

Q. Did you find any evidence of any such terrace or platform above the 180 foot contour?

A. No, I did not.

Q. When you referred in your cross examination to the bank full stage, I will ask you to state how the bank full stage compares with the mean high water elevation, which you found to be 173.09 foot contour?

A. That is what I understand to be the mean high water stage, when the lake reaches its bank full stage.

Q. Does it compare with the definite bank?

A. It does.

320 Q. So you mean by bank full stage, when the water reached that bank?

A. Yes, sir, reaches practically the top of the bank, the base of this bank is somewhat lower than the 173.09 foot contour.

Q. So that the mean high water elevation of the lake, as you found it to exist there in 1812 and 1839, is represented by the bank?

A. Yes, sir.

Q. Which is practically continuous all around the lake?

A. Yes, sir, and traceable by a Geologist or any person familiar with lake features.

Q. Observable by the tree growth or surface?

A. Yes.

LIONEL L. JANES, a witness for the Government being recalled, testified as follows:

On direct examination he said:

By Mr. Hunter:

Q. Mr. Janes, I will ask you to examine and refer to the sample plots offered in evidence and marked Plaintiff 48 to 53 inclusive, and to state whether or not those plats show any evidence of drift wood along any contour around the lake? If so, what does the presence of the drift wood show and what elevation does it reach?-

A. Yes, sir, the plats show the position of the drift near such line. We found when the plots were made there was a lot of drift on the 170 foot contour, and a lot of drift at the 179 foot contour and then above the 179 foot contour, and a considerable number of fallen cypress trees, which was about the 173.09 foot contour. I will say in this connection that cypress wood, which is dead and down lying on the ground, are relative light and easy to float in the water—even green cypress timber will float high on the surface and dead cypress timber will float relatively high, and any considerable high water will carry cypress trees which are dead and down, lying on the ground to a high level, that is to say carry the cypress timber to the shore, or to the beach. The sample plots show just how far the cypress trees have been carried up on the beach,

since the coming in of the great raft in the
321 latter part of the eighteenth century.

Q. Is that shown on any particular plat?

A. It is shown on all of the plats. I will say that I examined the territory above the 180 foot contour and the territory below the 180 foot contour all around Ferry Lake, James Bayou and Clear Lake, to ascertain among others things whether or not any drift cypress was found at any particular level above or below the 180 foot contour, and above and below the 173.09 foot contour, and have been unable to find, in five or six months study many drift cypress trees above the 180 foot contour, and if the water had been there for any considerable period or several days or a week or two, this drift cypress below would have been carried up on the beach on this higher level. This would be especially true in exposed places, where there was no timber or underbrush to obstruct the floating of the trees on the beach. In some situations, where the shores are heavily timbered, and there is considerable underbrush, it would be difficult for the drift cypress trees to get through on the beach, but for any considerable length of time had the water been on the ground in the neighborhood of 180 to 185 foot contour these cypress trees would have worked through somewhere on the beach, and I was unable to find any such evidence anywhere around the shore of Ferry Lake. The plat of the sample plots shows the true condition of the different places on the shore and the plat shows no cypress above that contour.

Q. No drift above the 180 foot contour?

A. No, sir.

Q. Had the water gone above the 180 foot contour, would it have left marks on the ground in the shape of drift wood, above that contour?

A. Yes, sir, if it stayed there any considerable length of time, stayed a week or two there, there would have

been a line of drift at the extreme limit of the water, and all the drift is below—all the drift that is below would have been taken and carried up to the shore. I might say in this connection that the heart of the cypress is very durable, last for centuries—old dead cypress in the woods is frequently seen that has been down on the ground for a hundred of years, especially in St. Francis Valley and in Arkansas, where
322 the cypress were thrown down by the earthquake, and many of them are in the ground and still sound.

Q. The same thing applies to more or less of the drift wood above and along the contour, as to the age of the trees?

A. Well, most of the drift wood found below the 180 foot contour consists of pieces of old cypress trees, strips and fragments of the exterior portion and stumps, and more or less small and a good many of them much decayed and broken off from old stumps.

Q. How about the large cypress trees found along the 180 foot contour, dead, are they old or not?

A. There are no dead cypress trees adjacent to the 180 foot contour.

Q. I am speaking of the drift that you found along on the border?

A. There is a lot of drift along that contour, but there are very few cypress trees in the drift. I would like to amend my answer by saying, that on Sample Plot Number Two, in Section Twenty-Two, the plat of that plot shows cypress trees at the 179 foot contour but the most of the cypress trees that have drifted up on the beach are below that contour.

Q. In your opinion, as an Ecologist, does the 180 foot contour mark the extreme flood level of Ferry Lake?

A. No, sir, I think not.

Q. Since 1812 and 1839?

A. No, sir, I think the water action above the 180 foot contour at times of extreme high water of Ferry Lake, are only temporary and for a short period.

Q. Did it immediately recede, in your opinion?

A. Yes, sir, the crest was reached in a few days and then in a few days it was entirely off of the 180 foot contour.

Q. Then on the terrace or platform above the 180 foot contour, the water was only on there a short time, not any appreciable time?

A. No, sir, there is no such terrace or platform made by the waters of Ferry Lake.

Q. Had the waters run above the 180 foot contour for any appreciable time, would they or not have left a terrace or platform?

A. Yes, sir, there would have been a mark, if the water had come up any series of years and stayed there any length of time, there would have been a
323 terrace there.

On Cross Examination he said:

By Mr. Smith:

Q. To create one of these platforms the water would have to stand about a year, would it not?

A. No, sir, could come up and stay two or three weeks for a series of years, there would be a platform created and marks at the extreme limit of the overflow. It would be impossible for the water to stay there without leaving its mark.

Q. You and Prof. Leverett are not in harmony on that?

A. I do not know, I said for a series of years.

Q. Would you say twenty times out of forty-one years, that would be a series of times—if the water

went over the 180 foot contour twenty-one times in forty years, ought that to create a platform?

A. If it went above the 180 foot contour any appreciable depth twenty times in forty years, there would be some marks, in exposed situations.

Q. I will ask you, the creation of these platforms, that is the wave action on the shore?

A. Yes, sir.

Q. I will ask you, in extreme high water, if there is practically any waves created by the water on the shores?

A. Well, it depends upon the storms, how the wind is blowing.

Q. Would it take a storm period to bring about the formation of this platform?

A. No, sir, but a storm period would bring about the platform more quickly.

Q. In the Spring time, when we generally have the floods here, I will ask you, if weather conditions are such as to make that platform in three or four weeks, is such a thing possible?

A. Yes, sir, if the flood is there and continues for a series of years there would have been a platform.

Q. You think then, that from the tree growth on the platform above the 173.09 foot contour and the 180 foot contour, that the water could not have existed on that platform for any length of time, or else it would have killed out the Post Oak and other trees, that indicate dry land. There is no Post oak between the 179 contour and the 173.09 foot contour?

324 A. There are no post oaks below the 179 foot contour, between that and the 173.09 foot contour, and on the other hand oaks that are tolerant of occasional overflows, such as overcup oak, willow oak, water oak and also red gum are found on that

platform of the mean high water marked in the raft period up to the 180 foot contour.

Q. For how long a period will those trees stand overflow, three or four weeks?

A. Yes, sir, they will stand water for three or four weeks, in their rest period, or longer.

Q. So that the platform between the 173.09 foot contour and the 180 foot contour, the trees would stand three or four weeks of water?

A. Those trees would stand such overflow and not be destroyed, if such overflows were present.

Q. Well, I will ask you to look at the Chart made by Mr. J. W. Cronk, Local Weather Forecaster at Shreveport, Louisiana, and produced by Prof. Leverett, in 1849 the stage of the water at Shreveport as given is 35.09, is it not?

A. Those are the figures there.

Q. Now, I will ask you if the datumat Shreveport, was 141 feet?

A. Yes, sir, 141 appears here. I never seen this before.

Q. Well, if you take it that the 141 is the elevation at Shreveport, and the elevation of the water in 1874 was 27.9?

A. Those figures are on here 27.9.

Q. Add that to 141 the stage of the water at Shreveport gives 168.9 in 1874?

A. Yes, sir.

Q. The increase on Ferry Lake is 10.1, making the stage 179 feet in 1874?

A. That might have been true in extreme flood stages? I do not dispute those figures at all.

Q. I have made the calculation and I will just read them to you, the records shows that the water of Ferry Lake in 174, was 179 feet, in 1876 it was 183 feet, 1877 it was 180.9 feet; 1878 it was 179.5 feet; 1882 it was

182.5 feet; 1884 it was 183.8 feet in 1885 it
325 was 181.6 feet; in 1888 it was 181.00 feet, in 1889 it was 183 feet; in 1890 it was 185.8 feet; in 1892 it was 186.8 feet; in 1893 it was 180.2 feet, in 1894 it was 185.6 feet; in 1895 it 181.4 feet; in 1902 it was 185.2 feet; in 1903 it was 194.1 feet; in 1904 it was 179.6 feet; in 1905 it was 184.7 feet; in 1908 it was 186.3 feet and in 1915 it was 180.2 feet. Now I will ask you if since 1874 to 1915 inclusive, if the water did not go over 180 feet twenty times, and if you could have trees that are intolerant of water between the 174.09 and 180 foot contour?

A. Between the 173.09 foot contour and the 179 foot contour there are not trees that are intolerant of water, except slightly below the 180 foot contour.

Q. So that the water could easily have reached the 180 foot contour frequently?

A. Yes, sir, might go up over that.

Q. Now in some of these years, where it went over 183, and to 185, it must have stayed at a level between 173.09 and 180 three or four weeks—the water could hardly drop fourteen to sixteen feet in three weeks?

A. I think that the water dropped very rapidly off of that area and my reason for thinking so, was from the examination of the cross section, of many stumps that were dead, that I cut between the 173.09 and the 180 foot contour, to determine whether or not there had been any overflow that lasted any length of time on that terrace. It there had been there would have have been a narrowing of the rings, especially if it was during the growing season, you would have had double rings, it would have checked the growth.

Q. Well how long would you say that the water stood between the 173.09 foot contour and the 180 foot contour?

A. Of course, I could not tell exactly. Of course it might stay a few days or it might stay a week or two at a time.

Q. Do you think that you would have a drop of thirteen feet in three or four days?

A. Yes, sir, in two weeks, and may be within a week, the water would rise and fall.

Q. So working that out, according to your deduction the water would have to drop from ten to sixteen feet in two weeks?

A. Yes, sir, it dropped down to mean high
326 water mark very rapidly.

Q. If, as a matter of fact it slowly receded, it would hardly work out your theory?

A. It might have slowly receded through the resting period for the vegetation during the winter time—it might have receded more slowly then, but it could not have remained any length of time in the growing season.

Q. The growing season is March, April and May?

A. Yes, sir, and also later than that, June, July, August and September.

Q. Prof. Leverett made a list of the dates of the various floods, one on December 3rd, January 4th, 5th, another February 3rd, March 10th, April 11th, May 6th, June 2nd and July, so I will ask you if April and May are not in the growing season?

A. Yes, sir.

Q. Must have had floods during that time, if the data is correct?

A. The data speaks for itself. I do not know about that.

On Re-Direct Examination he said:

By Mr. Hunter:

Q. You were asked about the recession of the water, and how long a time it would have taken to recede from the 180 foot contour—I will ask you to state whether or not it is a fact that the water would only have had to recede about seven feet to reach the mean high water mark, from the 180 foot contour?

A. Yes, sir.

Q. The mean high water is 173.09?

A. Yes, sir.

Q. On cross examination you were asked a good many questions based upon weather Bureau reports, that have not been identified or offered in evidence, but I will ask you to state whether or not the reports about which you have been questioned, don't show the extreme flood stages?

A. That is what I understand.

Q. These reports do not purport to show the mean high water elevation?

A. No, sir, they do not.

Q. If the water had gone to an elevation above the 180 foot contour, as many times as twenty in forty years and remained at the elevation on an average length of time of say three weeks each time, would there have been any post oak on the area covered by that water?

327

A. No, sir.

Q. And you do find Post Oak within the 180 foot contour, or above the 180 foot contour, and at the 180 foot contour?

A. Yes, sir and up land hickory and other species of trees common to up land forests, that rarely if ever overflows.

Q. They are intollerent of water, are they not?
A. Yes, sir.

ARTHUR D. KIDDER, a witness for the Plaintiff, being recalled, testified as follows:

On Direct Examination he said:

By Mr. Hunter:

Q. Mr. Kidder, I will ask you to state whether or not it is a fact that in the reproduction of the Warren survey, of this Township you found that he terminated his section lines, and run meander lines approximately on the 173.09 foot contour, as established by you?

A. That is a fact.

Q. Some questions have been asked, in cross examinations with respect to possible high water elevation, extreme water elevations from the 180 foot contour and above it, now had the water been at an elevation of 180 feet, I will ask you to state what effect such an elevation would have had on Warren's meander corners and on the section lines?

A. If the water level through the period of the Warren survey had been at the 180 foot contour, or any elevation above that, it would have presented an impossible condition, of Warren having established his meander corners on the section lines where he terminated his section lines on the border of Ferry Lake, below the surface of the water, ranging in most cases down to seven feet or more below the surface of the water, if it had occupied the level of 180 feet or more.

328 Q. If the water was above 180 feet his meander corners would have been correspondingly deeper in the water?

A. They would.

Q. Are all section lines and meander corners, according to the rules of Surveying, to be located seven or eight feet of water?

A. They are not. If there is high water during a survey, the Surveyor is required to suspend operations in that locality until the water recedes to the mean high water elevation.

Q. State whether or not it is a fact that at or near this land in controversy in this case, Warren terminated one of his section lines on the contour which you found to represent the mean high water elevation of 173.09?

A. Warren terminated the Eastern boundary of Section Ten, exactly on the 173.09 foot contour. Warren terminated his survey of the Northern boundary of Section Ten at a point less than one foot above the 173.09 foot contour and a very short distance from it horizontally.

Q. Did he or not run a number of his meander lines along the same contour?

A. That is correct in the sections where Warren ran out his meander lines, in a way that would conform with what he found to be the border of Ferry Lake, at 173.09. The agreement is very close in average elevation of the meander lines, is very close to that level.

Q. In the cases where Warren's meander line does follow the contour of Ferry Lake or James Bayou, is it or not a fact that that contour which he follows is the 173.09 foot contour established by you?

A. That is true.

On ReCross Examination he said:

By Mr. Smith:

Q. Mr. Kidder, do you know the mean level at Shreveport—is it not 141?

A. Not from any personal knowledge.

Q. Well, have you any way of getting that data?

A. Only by inquiry from others who are familiar with that average of the elevation.

Q. From that source, what do you under-
329 stand it to be?

A. I do not know what it is. I do not like to make an admission about a fact, about which I have no knowledge. I do not know.

Q. Well, if you take it, as 141, as being the level, and the stage of the river as shown by the statements made by J. W. Cronk, Local Weather Forecaster, from 1874 to 1915 inclusive, what would you add to that stage of 141, to get at what the high water was at Mooringsport or here at Shreveport?

A. There is nothing on the report to show what datum it refers—no connection that I can see between that and the mean high water elevation, that we have been called upon to testify in regard to.

Q. If I show the level was 141, and that is correctly stated, as the high water at Shreveport, you would add what figures to the 141 to give the high water at Shreveport?

A. If the zero state agrees with 141, and that 141 refers to mean Gulf level, a simple addition would give the height at extreme high flood level.

Q. Mr. Kidder, examine this Chart, and I will ask you to count with me, since 1874 to 1915 inclusive, and see if the water was not over the stage of 27.9, at least twenty times in the forty-one years?

A. That seems to be correct.

Q. Now do you know how much higher the levels of Ferry Lake are above Red River at Shreveport?

A. I do not.

Q. You do not?

A. No, sir.

Q. You do not know approximately what they are.

A. No, I do not, I had no occasion to look into that.

Q. If it is 10.1 higher than the Shreveport level, in those forty-one years, it would show a number of years where the water was over 180 feet, would it not, if my data is correct?

A. If your data is correct, and your assumption is correct, that would result in an elevation in Ferry Lake exceeding 173.09.

Q. In 1874, 183; 1882, 182, 1889, 183; 1890, 185; 1892, 186; 1902, 185; 1903, 184; 1905, 184.7; 1908, 186.3; now I will ask you if land was overflowed twenty times in forty-one years, if you would not call that overflowed land?

A. No, sir.

330 Q. You would not?

A. No, sir.

Q. It would have to go under every year to be designated as overflowed lands?

A. It would have to be so wet in its natural condition, as to be unfit for cultivation, without artificial drainage in order for it to be called overflowed land, in the way that Surveyors understand that term.

Q. Well, if this land omitted, as alleged in Sections Nine and Ten, overflowed twenty times in forty-one years, it would be practically unfit for cultivation?

A. No, sir, that is not any test of that character of land. It might be overflowed every year in the forty-one years and still not be overflowed to the extent that it is unfit for cultivation.

Q. How could you cultivate land that is overflowed every year, and make a success of it?

A. The overflow conditions do not necessarily occur during the growing season of the year, the crop seasons, may not interfere but slightly with the cultivated land.

Q. Well, if the records would show that these floods came in April, eleven of them during April, six in June, would not that interfere very seriously with the growing crops?

A. It might interfere with what would be the most dependable season to put in a crop, but crops can be made in this country, after the first of July.

Q. Mr. Kidder, from your investigation of the historical data at hand I will ask you if it is not a fact that during the flood stages here that the water rises a certain height, then slowly receded? There is nothing to indicate that the waters of Ferry Lake rose almost over night then to a six or eight foot drop in two or three days, nothing to show such a condition in this area?

A. There was no attempt made, in the line of the investigation by any department, either the surveying party, Ecologist or Geologist that I am aware of that went into the subject of the rate of rise in the water, or the rate of recission of the water during flood periods, and not being called upon to answer the question as to the rate of rise or rate that it receded, as I
331 was not required to say and I do not know just what that rate is.

Q. You are familiar with the areas where they have tile drainage so as to carry off the water quickly after overflows—from your study of the levels of Ferry Lake and the conditions there, was there anything there to indicate the sudden rise of the overflow conditions and the rapid recessions of the waters?

A. Only in one instance the rise that occurred during the progress of the examination, there was one rise due to heavy rains in the basin just west of this Township and the water came up for a few days and went down quickly, and the maximum elevation was maintained only a few hours.

Q. That was a heavy rain?

A. Yes, sir.

Q. That had nothing to do with extreme river conditions?

A. I do not believe that Red River backed up into that Township at the time.

Q. My question was relative to the flood stages of Red River and the recession of the water, in your opinion it would be gradual?

A. That would be an opinion pure and simple, as I have not made a study or investigation in that direction.

On Re-Direct Examination he said:

By Mr. Hunter:

Q. Has Ferry Lake as large a drainage basin as Red River?

A. No, sir.

Q. It has a small drainage basin, as compared to Red River?

A. Yes, sir, a very small fraction of the drainage area.

Q. Does Cypress Bayou run into Ferry Lake from the hills—it don't run into the river?

A. Cypress Bayou, as we know Cypress Bayou today, is that part of Ferry Lake to the west of Township Twenty North of Range Sixteen west, lying in Texas. It is now a large lake condition and it was formerly a forested valley.

Q. That flood condition of Red River, did those conditions hold true as to Cypress Bayou?

A. No, sir, not comparable as the conditions are so entirely different.

Q. You have been asked some questions
332 relative to the data of flood stage of Red River, I will ask you whether or not the reported data relates to mean water?

A. There is no reference on the typewritten paper referring to mean high water elevation in the least.

Q. I will ask you to state whether or not the flood stages of Red River, especially since the taking out of the raft, necessarily affects the flood stage of Ferry Lake?

A. I would say generally that it would not affect the flood stage of Ferry Lake in Township Twenty North of Range Sixteen west, as the difference in elevation is such, that there might be a flood in Red River and not have any flood in Ferry Lake in Township Twenty North of Range Sixteen West.

J. W. TEDDER, a witness for the Plaintiff, being first duly sworn, testified as follows:

On Direct examination he said:

By Mr. Hunter:

Q. Mr. Tedder, where do you live?

A. Vivian, in the Northwest corner of Caddo Parish.

Q. How old are you?

A. I was born the 12th of April, so my mother says, 1853, in Alabama.

Q. Are you familiar with Ferry Lake?

A. Yes, sir, tolerably good.

Q. You live now in the neighborhood of Ferry Lake?

A. Well I think, they call it fifteen miles from Vivian to Mooringsport.

Q. Have you frequently been on and around Ferry Lake, and the land on the border of the lake?

A. I put in about six or seven years fishing there, fishing and hunting together.

Q. I will ask you to state whether or not you are familiar with the land in suit, being lots eight, nine and ten of Section Ten of this Township?

A. Well I have been on those lands a good many times, and at different times of the year.

Q. State whether or not the lines of these
333 lots and the location of these particular lots have been pointed out to you by any surveyors?

A. Yes, sir, the lines between Sections Ten, Nine, Fifteen and Sixteen.

Q. And also the location of the land involved in this suit?

A. Well, I never did follow out the Northern boundary on the East side between Sections Ten and Eleven, but I have followed out the line between Sections Nine and Ten and Sections Three and Ten, and followed out the line between Sections Ten and Fifteen.

Q. State whether or not you were recently taken on the lands involved in this suit by any person and the lines pointed out to you?

A. Yes, sir.

Q. Who took you on those lands?

A. Mr. Neal and Mr. Clement, last Saturday a week ago.

A. Yes, sir.

Q. Last Saturday a week ago?

Q. You are familiar with the lands then are you?

A. Yes, sir.

Q. How long Mr. Tedder, have you known those lands?

A. The first time that I was ever on the land was in February 1867.

Q. February, 1867?

A. Yes, sir. I was a boy.

Q. Have you been on them frequently since that time?

A. Yes, sir, I was on it then for two or three days and then in 1871, 1872 and 1873. I was fishing there and camped in Section Four close to the line.

Q. You first became familiar with it in 1867?

A. Yes, sir, the first time I was ever on it, my Uncle moved five miles below Mooringsport on Soda Lake and he partly raised me.

Q. Did you ever live on the shore of the lake near this land?

A. Yes, sir, lived within about one hundred yards of the line of Section Ten.

Q. Did you at any other time live near the land?

A. I camped, you might call it living, I was fishing and you know how the fishermen do, they stay at a place six or seven months and then move probably two miles, find a more suitable place. I never did live on Section Ten—but I have been over it many and many a time.

334 Q. What is the character of that land?

A. Well up on the hill next to Nine, there was at one time a great deal of big pine timber, but it was cut off. There is a natural growth of timber, what we call black oak, all small scrubby timber a few scrubby pines, red oak, and post oak, then when you get down nearer to Section Ten we have—near where the Widow Marshall lives, there is a natural growth of timber, consisting of pin oak, water oak and some few over cup, a few white oak, but the most of the overcup and white oak have been cut off, were cut off for ties in 1894.

Q. Been cut for ties?

A. Yes, sir, when the railroad was built through there, everyone that wanted to make ties went in there and cut the timber, no one was to look after it. That is the way that it went.

Q. On this land that is in suit, are there a good many post oak trees?

A. Yes, sir, the most of it is scrubby post oak, not many very large trees, post oak trees on it, as I say most of the timber was cut off, the good timber, but you can see the stumps there.

Q. When you were familiar with the land in 1867, what was the timber growth on it then?

A. About like it is now, but of course some of the larger timber has been cut off, and the pine timber in 1871 I helped cut the timber there and run it here to Shreveport to John R. Jones.

Q. What kind of timber?

A. Pine, that is the only kind that would float.

Q. Was that on the land?

A. Yes, sir, and the stumps are there today, to show where they were taken off, of course the woods have been burned off and the sap has rotted, but the heart is there yet.

Q. When you first became familiar with that land, was it well wooded?

A. Yes, sir.

Q. At that time, what was the character of the timber in general on this land in suit?

A. Pine, red oak, post oak and a good deal of what we call black jack, black oak is the right
335 name, but the black oak was small timber, scrub timber.

Q. What was the character of the timber when you first knew the land, where there a good many large trees?

A. Yes, sir, a good many red oak, and some few pine.

Q. And Post Oak?

A. Yes, sir, regular hill growth.

Q. I will ask you to state whether in 1867, and during the seventies, from the time that you first become

familiar with the land whether the timber growth on the land, was hill growth, up land growth?

A. Yes, sir.

Q. Is that up land or not?

A. It would be termed up land, hill land, all along on the lake across here from Mooringsport, and on down here you find the same kind of timber that was on that point across the lake, there are of course low places, slought, and there are other places that are high bluffs.

Q. The general character of the land is about the same as the hill lands lying between Shreveport and Mooringsport?

A. Yes, sir. Of course there at Mooringsport there is nothing but oak timber altogether, no pine until you go west from there for about a mile down this way.

Q. There were some pine trees growing on this land in 1867, when you first become acquainted with it?

A. Yes, sir.

Q. There are still pines there?

A. Yes, sir, growing along about the same place as they were then.

Q. Did I understand you to say that a good deal of the large timber had been cut out?

A. Yes, sir.

Q. You yourself cut some of the timber?

A. Yes, sir, helped cut it, hired to work for wages.

Q. In what years?

A. 1870 and 1871.

Q. Now on what section was that timber cut?

A. Well we cut out the Wilson point place in Section Nine, back East and down to the line of Section Four, where Section Four and Nine join and
336 Three and Ten. There is a corner there. There was very little pine timber on the East side of Ten, the most of it was on the ridge.

Q. Did you cut any timber on the land that is involved in this suit in 1870?

A. Well, to be honest I do not know, could not swear I did, did not know anything about the lines then and never paid any attention to the lines.

Q. From the best of your knowledge was timber cut in that neighborhood?

A. Yes, sir, to the best of my knowledge, there was pine growing on it, and I think I can show you some stumps now, of the very timber that I helped cut in 1871, pine timber was floated, we would put it in the river there at the point, which was called Tedder point, and hold it there and then float it to Shreveport and it was sold to John R. Jones, down here where Cross Bayou runs in. When the river would rise the water would back up and there would be a current in there. In July, 1871, we run the timber down.

Q. Is the land about the same in character now as then?

A. Yes, sir, I suppose so.

On Cross Examination he said:

By Mr. Smith:

Q. What year were you born in Mr. Tedder?

A. I was born in 1853.

Q. Now the pine that you cut was on the ridges?

A. Yes, sir up on the hill.

Q. Up on the hill?

A. Yes, sir.

Q. You were on that property that you have testified and cut the timber in the years 1871 and 1872?

A. Yes, sir.

Q. You did not know where the lines were at that time, between sections nine and ten?

A. No, I did not know where they were at the time.

Q. In fact you did not know that there was any section nine?

A. Of course, I knew there was a section in there.

Q. Was not any section?

337 A. The land was there, but I did not know anything about the sections then, I was not looking for any lines, I was looking after the timber.

Q. They did not show any section nine on the Warren map?

A. I do not know. The timber was all in Section Ten, the Warren line, the land was surveyed off by a man by the name of Warren, that is all in Section Ten.

Q. The pine was over near the Club house?

A. No, sir, back up, further up that way.

Q. Up towards three?

A. Up above the Club house.

Q. Mr. Tedder, as I understand the timber was cut over where Bristol surveyed, over west part of Nine?

A. No, sir, that is on the Bank of the Bayou.

Q. How far from the bank of the bayou?

A. I could not tell you how far it was, but it was in the woods and we went there and cut the timber and put it in the lake at the point.

Q. Did you go with Mr. Clement over some land in Section Ten the other day?

A. Yes, sir.

Q. The pine that you cut was Northwest of that?

A. I showed him the stumps on the land claimed now, I says here is the pine that we cut in 1870 and 1871 for Mr. Jones in Shreveport.

Q. You were carried on the lots involved in this suit in Section Ten by Mr. Clement?

A. Yes, sir.

By Master:

Q. When you went there the other day and showed these gentlemen where you cut the timber in 1871, they told you when you pointed out the land, did they tell you what section it was?

A. I knew what section it was.

Q. You knew that already?

A. Yes, sir.

Q. What section?

A. All the way I can tell you, there is part of Section Ten between this line we went and looked at.

Q. What line you understand you looked
338 at?

A. The line supposed to be surveyed by this man in 1835.

Q. They showed you the line that Warren surveyed?

A. Yes, sir, then since that that line was run off in 1894 by a man named Barber, and since that time I have been over it. The stumps are up there between this land lying between the western boundary and the zig zag line.

Q. As surveyed by Warren?

A. Yes, sir. The line between that and section nine.

Q. Lying west of that?

A. Yes, sir.

Q. You have seen Ferry Lake pretty high in your time?

A. Yes, sir.

Q. You have seen it spread all over the country?

A. Not at over.

Q. You have seen it cover this land nearly every year?

A. No, sir.

Q. Do you remember what years you were there?

A. I was there in 1867, and I was there in 1871 and 1872, and there in the Spring of 1873.

Q. You were not there in 1874, when the high water was there, 1876, 1877 and 1878?

A I was there in 1874 fishing on the Bayou, at Plum Point.

Q. Had pretty high water all the year?

A. Yes, sir, tolerably high water along those days, had a good deal of high water, than since then, Red River has not overflowed as much since then as it did in those days.

On Re-Direct Examination he said:

By Mr. Hunter:

Q. Mr. Tedder, did Mr. Clement, the surveyor, show you the line that Warren run out in Section Ten, Southwest Fraction Quarter of Section Ten, that is the line to which you pointed just now?

A. Yes, sir. We first went down near the Marshall place.

Q. Do you know what section that is?

A. Ten, and went on down the line between sections fifteen and Ten down to the lake, running nearly South,
then struck that line and went up it I suppose
339 three hundred yards and turned off then in a
Northwesterly course and run that apiece and then we went zig zag nearly West again, I suppose from the growth of the timber, I could tell by the moss that grows on the trees.

Q. Are you familiar with the land that was patented to S. D. Pitts?

A. That is the land that we went over.

Q. I will ask you to state whether or not the land on which the timber was cut lay west of the Pitts land?

A. Yes, sir, west of there, between Nine and Ten and then back on the ridge.

Q. I will ask you this question, whether or not you cut any timber on the land in Section Ten, that lies

West of the land known as the Pitts land, that Pitts acquired by the patent?

A. Yes, sir, I helped cut timber all along that ridge, I did not know what section it was in then, people paid no attention to Sections.

Q. From what you know now in regard to the section lines—from what you know of the ground and from what you know now of the sections, I will ask you to state whether or not you cut timber on the land lying west of the Pitts land, the land patented to Pitts in Section Ten?

A. Yes, sir. The reason I know we did Grandfather bought the Wilson point place in Section Ten, Nine and Four and I was a little fellow then.

Q. Wilson's point?

A. Yes, sir, in section Nine and Four.

Q. The timber that you cut was lying East of that or South?

A. East, the line I suppose was East and West, and the other lines North and South.

Q. Did you point out to Mr. Clement the Surveyor and Mr. Neal, the land on which you cut some timber in 1870?

A. Yes, sir.

On Cross Examination he said:

By Mr. Smith:

Q. There were two Pitts' patents, which do you refer to?

A. I am referring to the one that was sold to the Club Company, fifty-seven acres.

Q. What Pitts?

A. S. D. Pitts.

340 Q. Do you know where the other entry was?

A. Well there was no entry granted to him, that was in Sections Nine and Four, Mr. Phillips at Natchitoches wrote me in 1898, the patent was issued to Mr. Noel, Mr. Phillips wrote me that it belonged to James Noel of Mooringsport.

Q. Is that Club house on the S. D. Pitts land?

A. No, sir, don't come within two hundred yards of the Club house in Section Nine, the S. D. Pitts land that he sold to the Club Company don't go within a quarter of a mile of there. I do not think that the nearest point of the ground touches the Club house.

341 MRS. A. L. BALLARD, a witness for the Plaintiff, being first duly sworn, testifies as follows:

On Direct Examination she said:

By Mr. Hunter:

Q. Mrs. Ballard where do you live?

A. I live about two or three miles west of Oil City.

Q. In Caddo Parish?

A. Yes, sir.

Q. I will ask you to state whether or not you were taken by Mr. Clement, a Surveyor, and Mr. Neal, a Government man, on the land involved in this suit in Section Ten?

A. Well I was down there and they did not call me to go around with them—I did not know.

Q. Are you familiar with the land?

A. Yes, sir, you might say I was largely raised on that land.

Q. How long have you known it?

A. I was born in 1882.

Q. Where did you live in 1882?

A. Right where the Club House stands now.

Q. You were living where the Club House now stands?

A. Yes, sir, they tore the building away—we sold the improvements to the Club and they tore the house down and built their Club House.

Q. Your mother sold the improvements to the Jeems Bayou Fishing & Hunting Club?

A. Yes, sir.

Q. You have been familiar with this land then since 1882?

A. Yes, sir.

Q. What is the character of this land?

A. Well I would call it up-land, the timber growth on it is the same as any up-land growth, with post oak, some black-jack and trees that some people call black oak, just the kind of timber that grows on up-land—this land don't show any over-flow timber on it.

Q. It is just about the same character of timber that grows on any other hill land?

A. Yes, sir, that is the way that I see it, there is some pine on it.

No cross examination.

342 MR. M. G. ANGEL, a witness for the Plaintiff, being first duly sworn, testifies as follows:

On Direct Examination he said:

By Mr. Hunter:

Q. Mr. Angel where do you live?

A. I live near Oil City in Caddo Parish.

Q. How old are you?

A. I am nearly fifty-eight years old, I was born in 1860.

Q. State whether or not you have lived in the neighborhood of Ferry Lake?

A. Well I came in there in 1895.

Q. In 1895?

A. Yes, sir.

Q. Have you been familiar with Ferry Lake since that time?

A. Yes, with the exception of two years that I was out of there—with the exception of those two years I have lived there in that community.

Q. State whether or not you were taken by Mr. Neal and Mr. Clement on the land involved in this suit recently?

A. Yes, sir.

Q. They did show you the lines?

A. Yes, sir, they showed me some lines there I suppose that they purported to be the lines of the old Pitts' land.

Q. Some land lying there west of those lines?

A. Yes, there is some there.

Q. Now state whether or not after having been shown that land you recognized it as the land with which you have been familiar since you have lived in that section of country?

A. Yes, sir.

Q. Have you been on that land or have you been on it before it was shown to you by Mr. Clement and Mr. Neal?

A. Yes, sir.

Q. Frequently or seldom?

A. Well, yes, sir, frequently. I passed through the country as I lived not far away from it.

Q. How far did you live from it?

343 A. Probably a mile and a half.

Q. How long did you live as close as a mile and a half from this land?

A. Since 1898.

Q. Prior to 1898 you lived near the land and had been on it?

A. Well, I went around—I lived there one year in fact came there in 1895 and left there in 1896 and then came back in 1898 and since that time I have been there continuously.

Q. What is the character of the land involved in this suit with respect to whether it is up-land or not?

A. Why I would consider it up-land, similar to the land in the community generally throughout the country.

Q. Similar to other up-lands throughout the country?

A. Yes, sir.

Q. What is the timber growth on that land?

A. The major part of the land is covered with what I would say was post oak growth, of course there is other timber in there, in fact there is some pine, some black-jack, some pin oak and other kinds.

On Cross Examination he said:

By Mr. Smith:

Q. Mr. Angel you remember the water in 1895 was very high?

A. Well, no, I came there during the spring of 1895.

Q. Then you could not tell?

A. No, sir.

Q. Do you remember the high water of 1902?

A. Yes, sir, I recollect the high water, I have noticed it since I have been there and it is sometime between 1900 and 1902, but I don't recollect the year.

Q. Were you around the land that they took you over in or about that time?

A. Yes, sir, I was around the land on the lake shore during that high water but whether I was across this land I don't know.

Q. Then you don't know how much went under water at that time?

A. No, sir.

Q. You know that a good deal of it did?

344 A. No, sir, I could not say I have a recollection of crossing a sag at the point shown us there as the meander corner of the Pitts' land, there was a drain or sag that run out in there and I recollect crossing that at one time when the water was backed up from the lake and there was some water in that sag.

Q. Were you there during the high water of 1892?

A. No, sir, I came there in 1895.

Q. Were you there during the high water of 1902?

A. Yes, sir, I was in the community, but whether this is the time that I speak of seeing the water in the slough I would not say.

Q. You know that in 1902 the water was very high?

A. Yes, sir, several times since then.

Q. You cannot testify that you were there on this land that is now in dispute at that time?

A. No, sir, only I was around the Lake shore.

Q. Now that land that Pitts' entered is low land as a rule?

A. The Pitts' entry as it was pointed out to us the lines was in a kind of slough I suppose rather below the average of the remaining land on that point.

Q. Do you know where the Club House is?

A. Yes, sir.

Q. Now there is some on a ridge near there?

A. No, sir, the general surface of the ground is level.

Q. You cannot say that the Club House is about on some of the highest land in that country?

A. I think so but maybe a foot or no difference.

Q. But you would not pretend to say what it is?

A. No, sir.

MR. J. F. IVEY, a witness for the Plaintiff, being first duly sworn, testifies as follows:

On Direct Examination he said:

Q. Mr. Ivey where do you live?
A. I live in Mooringsport.
Q. How long have you lived there?
345 .A I have been living there about forty or forty-five years.
Q. Are you familiar with the land that is involved in this suit?
A. I know it.
Q. How far is it from Mooringsport?
A. Well I would suppose it is about eight miles, six or eight miles.
Q. How long have you been familiar with this land?
A. For the past thirty years I suppose.
Q. Were you recently taken on the land by Mr. Clement, a surveyor, and Mr. Neal, a Government Agent, and shown the land involved in this suit?
A. Yes, sir.
Q. After having seen it did you recognize it as being land with which you were familiar?
A. Yes, sir.
Q. Now what is the character of land involved in this suit, that is whether or not it is up-land?
A. Well the timber on it—the growth on it is about such as we generally have in ordinary hill lands—there was some pine, some oak, some water oak, pin oak and post oak.
Q. Some post oak?
A. Yes, sir, some post oak.
Q. Any black-jack?
A. Yes, sir, about like it is on all other lands.

Q. Is this land similar in character to the ordinary hill land in this part of the country?

A. I think so.

On Cross Examination he said:

By Mr. Smith:

Q. Mr. Ivey, do you remember the high water at Mooringsport in 1902?

A. Yes, sir.

Q. You do not know anything about what the level of the lake was?

A. No, sir, but I know it was pretty high.

Q. Were you on this land that is in dispute at that time?

A. No, sir.

Q. With the water as high as it was then
346 would it carry it all under?

A. I could not say as to that.

Q. You don't know?

A. No, sir, but the water was pretty high.

Q. Now that lake according to your knowledge has been pretty high constantly at various times?

A. Yes, sir, at various times.

Q. Now how long was the water high, three or four weeks and would it then go down?

A. I would suppose—of course it would come to a level then of course it would start back within twelve or twenty-four hours.

Q. But it would go down very slowly?

A. It would go down about like it come up.

Q. Very gradually?

A. Yes, sir, gradually.

Q. Now you have seen that happen for about forty years?

A. Yes, sir.

Q. It would gradually get to its maximum height then it would slowly recede?

A. Yes, sir.

Q. Now for the last forty years you have seen about twenty high waters there?

A. Well, I suppose that during the different seasons of the year that it was something like that—there are some years that we have high water, then other years we do not and in fact in 1917 we had no high water, nor did we have in 1916.

Q. But in 1908 it was pretty high.

A. Yes, sir, it was pretty high in 1906, also.

Q. Now in 1904, 1903 and 1902 it was pretty high?

A. Yes, sir.

Q. Now do you remember the overflow of 1894—it was very high then?

A. 1892-1890 it was high, I don't remember in 1894.

MR. W. J. JONES, a witness for the Plaintiff, being first duly sworn, testifies as follows:

347 On Direct Examination he said:

By Mr. Hunter:

Q. Where do you live?

A. I live up this side of Vivian two miles.

Q. In Caddo Parish?

A. Yes, sir.

Q. Are you familiar with the land around Ferry Lake?

A. Yes, sir, tolerably well.

Q. How old are you Mr. Jones?

A. Seventy-four years old.

Q. How long have you been living in the neighborhood of Ferry Lake?

A. I lived in that neighborhood twenty-three years.
Q. But were you familiar with it before that period?
A. Yes, sir.
Q. When did you first go to live in that section?
A. About forty-five years ago I went to live on Plum Point.
Q. About forty-five years ago you lived on what is called Plum Point?
A. Yes, sir, I lived there two years.
Q. Were you recently taken on the land that is involved in this suit by two gentlemen, Mr. Neal and Mr. Clement, a Surveyor, who pointed out to you the lines?
A. Yes, sir.
Q. Have you ever been on that land before?
A. Yes, sir.
Q. What is the nearest that you ever lived to it, that is with respect to this land, how close did you live to it?
A. Half mile.
Q. When did you live within a half mile of it, was that forty-five years ago?
A. Yes, sir.
Q. Did you at that time go on this land?
A. Yes, sir, I used to hunt over it.
Q. What was the character of the land then, did it have any timber on it?
A. Yes, sir.
Q. What kind of timber.
A. Pin oak, post oak and red oak.
348 Q. Was it about the same kind of timber that grew on other hill lands?
A. Yes, sir about the same kind of timber.
Q. What is the character of this land Mr. Jones?
A. I would call it high land.
Q. You call it high land?
A. Yes, sir.

Q. And it has been high land ever since you have known it?

A. Yes, sir.

Q. How does it compare with other hill land in this territory?

A. Just about the same character of land that is in that country.

Q. Now after you first became familiar with this land you moved away from that country and went somewhere else?

A. Yes, sir.

Q. Then you came back there?

A. Yes, sir, in 1894.

Q. In 1894?

A. Yes, sir.

Q. And you have been living in the neighborhood for about twenty-three years constantly?

A. Yes, sir.

On Cross Examination he said:

By Mr. Smith:

Q. You stated that you lived at one time on Plum Point, when was that.

A. It has been about forty-five years ago, I don't know exactly what year it was.

Q. You lived there how many years?

A. Two years.

Q. You don't know what time that was?

A. No, sir.

Q. Have you ever seen high water in Ferry Lake?

A. Yes, sir, I have seen some high water.

Q. How many years did you live close to Ferry Lake?

A. I have lived right close to Ferry Lake
349 for twenty-three years.

Q. What part of it.

A. I lived on the Russell Place.

Q. Now the Russell Place is north of Jeems Bayou Fishing & Hunting Club property?

A. Yes, sir.

Q. Now that is a kind of island in the lake there?

A. Well I lived on—there are two Russell Places.

Q. But you don't recall the year 1894 do you as to the high water then?

A. Yes, sir, the water was pretty high then and this land in to the west of there was not under.

Q. How much of it was not under?

A. I don't know exactly, I never paid any particular attention.

Q. You remember that a good part of it was under?

A. Well some of it was under, the low land where there were sloughs.

Q. But on the ridges were out?

A. Yes sir, but that high water I seen in there I think it was 1892.

Q. You were not there though in 1892?

A. No, sir.

Q. Or 1902?

A. No, sir.

Q. Or 1903?

A. No, sir.

Q. You were not there during the high water of 1904?

A. Yes, sir.

Q. But it was not as high in 1904 as it was in 1894?

A. I was not there in 1904.

Q. But you were there in 1892?

A. No, sir, I was living on Red Chute in 1902.

Q. Were you there in 1890?

A. No, sir, I lived on Red Chute for ten years.

Q. So you were only there one or two years that they had high water?

A. Yes, sir.

Q. And that is the time you say that part of this was submerged and that part of it was out?

350 A. Yes, sir.

On Re-Direct Examination he said:

By Mr. Hunter:

Q. Mr. Jones you stated that you lived in there or a short distance from this land about forty-five years ago?

A. Yes, sir.

Q. I will ask you to state whether or not you knew the land before you lived there forty-five years ago?

A. Yes, sir, I have been over it but did not pay any particular attention to it, I have been up and down the road and was never over the land until I went there to live.

Q. You don't know—you were a boy at the time?

A. Yes, sir.

Q. Did you ever fish from the lake when you were a boy?

A. Yes, sir.

Q. Now that was before you moved in that neighborhood?

A. Yes, sir.

Q. Who did you visit there?

A. A fellow by the name of Wilson.

Q. Who lived on Wilson's Point?

A. Yes, sir.

MR. E. D. WHITE, a witness for the Plaintiff, being first duly sworn, testifies as follows:

On Direct Examination he said:

By Mr. Hunter:

Q. How old are you?

A. I will be seventy years old the first of June.

Q. Where do you live?

A. I live over here at Briar's Point, close to Ferry Lake.

Q. Do you know what section you live in?

A. No.

Q. But you live on Briar's Point?

A. Yes, sir.

Q. How long have you lived there?

A. Two years.

351 Q. Did you ever live near Ferry Lake prior to that time?

A. No, sir, not closer than five miles.

Q. Where were living before you went to live at Briar's Point?

A. I lived up between there and Vivian.

Q. How long have you lived in the neighborhood of Ferry Lake?

A. About, somewhere close to forty years.

Q. Do you remember when you moved in that neighborhood?

A. No, I don't know that I do, but I have lived on that stream of water for about forty-five years, but I have been up above there four or five miles most of the time.

Q. Were you taken on the land involved in this suit, being Lots Eight, Nine and Ten, Section Ten, by Mr. Clement, a Surveyor, and Mr. Neal, a short time ago?

A. Yes, sir.

Q. Were you familiar with that land before they took you there?

A. Yes, sir.

Q. Now, after they took you there and showed you the land, I will ask you if that is the same land that you had been familiar with?

A. Yes, sir.

Q. How long had you known the land that Mr. Neal and Mr. Clement showed you?

A. About thirty years I reckon.

Q. Had been on it often?

A. Not very often, but off and on, once in a while.

Q. What is the character of the land?

A. In what way.

Q. As to whether it is up land or not?

A. I would suppose that it was, I never seen it overflow and the timber showed that it was up land.

Q. How does it compare with other up land in that section of country?

A. It sizes up pretty much like the other up land in that country.

Q. What kind of timber is on that land now?

A. Mostly oak, some few pine, pine and oak, post oak.

Q. Any black-jack oak?

352 A. Yes, sir, a few black-jack oak.

Q. Is it about the same in timber growth as it was when you first knew it thirty years ago?

A. Yes, sir, to the best of my recollection.

On Cross Examination he said:

By Mr. Smith:

Q. You have been on this land in question only a few times?

A. Yes, sir, I was across it every once in a while.

Q. Sometimes two, three or four times during the year?

A. Yes, sir, and then sometimes a year or six months I would not be across it, but I was along and across it at different times.

Q. You were never there when there was high water?

A. No, sir, I was never on it during high water.

Q. You cannot tell anything about the overflow conditions?

A. No, sir.

Q. You say that there are a few little pines on this land?

A. Yes, sir, and some few big pines.

Q. Now they were on the ridges?

A. I suppose that they are.

Q. You have seen Ferry Lake many times during your life?

A. Yes, sir.

Q. In the forty years that you have lived there you have seen a good many high waters?

A. Yes, sir, good many high waters.

Q. What has been your business?

A. Farming.

Q. Farming?

A. Yes, sir.

MR. GUS. N. VAUGHN, a witness for the Plaintiff, being first duly sworn, testifies as follows:

On Direct Examination he said:

By Mr. Hunter:

Q. Mr. Vaughn where do you live?

A. I live near Oil City.

Q. How long have you been living there?

353 A. I have lived near Plum Point since 1897.

Q. Since 1897?

A. Yes, sir.

Q. You state that you have lived near Plum Point since 1897?

A. Yes, sir.

Q. Do you know what Section you live on?

A. Section Nine.

Q. Township Twenty North Range Sixteen West?

A. Yes, sir.

Q. Were you recently taken on the land that is involved in this suit, being Lots Eight, Nine and Ten of Section Ten, by Mr. Clement, a Surveyor, and Mr. Neal?

A. Yes, sir, I was with them there.

Q. And you went with them around the lines of the land, walked around?

A. Yes, sir.

Q. Were you familiar with that land before they showed it to you?

A. Yes, sir.

Q. How long have you been familiar with it?

A. Since 1897.

Q. Since 1897?

A. Yes, sir.

Q. Now, had you ever gone over the land that is involved in this suit before it was pointed out to you by Mr. Neal or Mr. Clement?

A. Yes, sir, I was all over it at different times just in passing through.

Q. What is the character of this land in suit with respect to whether or not it is upland?

A. I judge it to be just ordinary agricultural land.

Q. Is it up land?

A. Yes, sir.

Q. How does it compare with the hill land in its vicinity?

A. About the same.

Q. What is the growth on the land?

A. Well post oak, over-cup, pine, hickory and such as that.

Q. Are there any blackjack?

354 A. Yes, sir, some blackjack.

Q. Is the timber growth about the same on that land as on other hill land in this vicinity?

A. Yes, sir, about the same.

Q. Is the present timber growth substantially the same as it was when you first knew it?

A. Yes, sir, about the same.

On Cross Examination he said:

By Mr. Smith:

Q. Mr. Vaughn, you say that you have been on it two or three times?

A. Yes, sir, I have been on it several times.

Q. Over twice?

A. Yes, sir, hunted there, walked over it hunting hen, and have been to the Club House several different times.

MR. VERNON TEAT, a witness for the Plaintiff, being first duly sworn, testifies as follows:

On Direct Examination he said:

By Mr. Hunter:

Q. Mr. Teat where do you live?

A. I live about a mile west of Oil City.

Q. In Caddo Parish?

A. Yes, sir.

Q. How old are you?

A. Thirty-two, or was the 29th day of March.

Q. Were you shown by Mr. Neal and Mr. Clement the land that is involved in this suit, being Lots Eight, Nine and Ten of Section Ten?

A. Yes, sir.

Q. When did they show it to you?

A. April 20th, I think it was.

Q. Of this year?

A. Yes, sir.

Q. Had you been familiar with that land prior to the time they pointed it out to you?

A. Yes, sir.

Q. How long have you known it?

355 A. Since about 1890.

Q. Have you been over it?

A. Yes, sir.

Q. Frequently or not?

A. Well from 1890 to 1899 I was over it often, but since then I have not been over it so much, probably a dozen times since 1899.

Q. You have been over it a dozen times since 1899?

A. Yes, sir.

Q. But before that you were over it frequently?

A. Yes, sir.

Q. What was the character of that land?

A. It is hill land, seems to be timbered land.

Q. What is the timber growth on it?

A. Post oak and what is known as pin oak, some few pines, probably some white oak and overcup.

Q. How does the timber growth compare with the timber growth on other hill lands in this vicinity?

A. It looks to be about the same.

Q. Is this land upland or not?

A. I should think so from the looks, of it.

Q. State whether or not it is similar to the other upland hill land in this vicinity?

A. Yes, sir, seems to be.

On Cross Examination he said:

By Mr. Smith:

Q. Now you speak of up land, that is land above the Lake?

A. Yes, sir.

Q. That which is in the Lake don't count when you speak of it as hill land?

A. No, sir.

Q. And when the Lake recedes you have a good deal more of hill land?

A. Yes, sir.

On Re-Direct Examination he said:

356 By Mr. Hunter:

Q. Is this land or not similar to the other hill land around in this vicinity or around Shreveport or the section around Mooringsport?

A. It is around Mooringsport but could not say so much about Shreveport.

Q. How about the country around Oil City?

A. Yes, sir, I don't believe that there is much pine or was not as much at the time that I lived there as there was out at Oil City.

Q. About the same character of land though?

A. Yes, sir.

On Re-Cross Examination he said:

By Mr. Smith:

Q. Now that is flat land and has some little pines on it?

A. Well it is what I have always known as second bottom land, it did not have a great deal of pine on it when I moved there.

Counsel for Plaintiff reserves the right to produce in evidence the admission as to the production from the wells on the tract of land in controversy and the value of the wells, or evidence or admission with respect to the drilling and operating of the wells.

Defendant's Evidence.

Counsel for Defendant offers in evidence the Patent issued by the United States Government to S. D. Pitts for the Fractional Southwest Quarter of Section Ten Township Twenty North Range Sixteen West La. Mer., dated October 1, 1860.

Filed in evidence and marked Defendant No. 1.

Counsel for Defendant offers in evidence Field Notes and Plat of the United States Official Survey made by A. W. Warren, Deputy United States Surveyor in 1839, upon which this patent was predicated.

Filed in evidence and marked Defendant No. 2.

Counsel for Defendant offers in evidence the Field Notes and Plat of United States survey made by Byron Bradley Bristol, United States Deputy Surveyor, in 1871, with the plat from the Surveyor General
357 dated May 29th, 1896, prepared in accordance with Commissioner's letter Division B, dated May 20th, 1896, attached to Field Notes of the survey by Byron Bradley Bristol.

Filed in evidence and marked Defendant Exhibit Nos. 3 and 4.

Counsel for Defendant offers in evidence deed from Sallie Pitts Austin and Heirs of Stephen D. Pitts to Sydney N. Kerley, dated May 8th, 1899.

Filed in evidence and marked Defendant Exhibit No. 5.

Counsel for Defendant offers in evidence deed from R. D. Pitts to Sydney N. Kerley and Jeems Bayou Fishing & Hunting Club, dated March 3d, 1905, same being passed before Thos. C. Barrett, Notary Public.

Filed in evidence and marked Defendant Exhibit No. 6.

Counsel for Defendant offers in evidence certified copy of affidavit of Mrs. Addie C. Pitts and A. C. Pitts, being sworn to on February 4th, 1907, before John D. Wilkinson, Notary Public.

Filed in evidence and marked Defendant Exhibit No. 7.

Counsel for Defendant offers in evidence certified copy of judgment in proceedings of Bankruptcy of Stephen D. Pitts, No. 379, United States District Court, Western District of Louisiana, in suit Jeems Bayou Fishing & Hunting Club vs. H. H. Huckaby, Trustee.

Filed in evidence and marked Defendant Exhibit No. 8.

Counsel for Defendant offers in evidence certified copy of affidavit of F. A. Leonard dated December 30th, 1907, for the purpose of showing heirship as to the children left by Stephen D. Pitts.

Filed in evidence and marked Defendant Exhibit No. 9.

Counsel for Defendant offers in evidence certified copy of power of attorney from Mrs. Lucie Pitts Joslyn, wife of B. F. Joslyn to Howard C. Stringfellow, dated May 25th, 1908.

Filed in evidence and marked Defendant Exhibit No. 10.

Counsel for Defendant offers in evidence certified copy of ratification by Mrs. Lucie Pitts Joslyn, wife of B. F. Joslyn, represented by her agent, H. C. Stringfellow to S. N. Kerley and the Jeems Bayou Fishing & Hunting Club, same dated December 12, 1908.

358

Filed in evidence and marked Defendant Exhibit No. 11.

Counsel for Defendant offers in evidence certified copy of the act of ratification by Lucie Pitts Joslyn,

wife of B. F. Joslyn, authorized by her husband, to S. N. Kerley and the Jeems Bayou Fishing & Hunting Club, dated December 21st, 1908.

Filed in evidence and marked Defendant Exhibit No. 12.

Counsel for Defendant offers in evidence certified copy of the deed from S. N. Kerley to the Jeems Bayou Fishing & Hunting Club, dated April 2d, 1910.

Filed in evidence and marked Defendant Exhibit No. 13.

Counsel for defendant offers in evidence certified copy of the deed from A. C. Pitts to T. H. & A. L. Pitts, conveying all of his right, title and interest in the suit of A. C. Pitts vs. the Jeems Bayou Fishing & Hunting Club, same being dated December 11th, 1911.

Filed in evidence and marked Defendant Exhibit No. 14.

Counsel for Defendant offers in evidence certified copy of compromise agreement between A. L. Pitts and T. H. Pitts and Jeems Bayou Fishing & Hunting Club dated April 10, 1912.

Filed in evidence and marked Defendant Exhibit No. 15.

Counsel for Defendant offers in evidence certified copy of a lease from Jeems Bayou Fishing & Hunting Club to Producer's Oil Company, dated October 17th, 1910.

Filed in evidence and marked Defendant Exhibit No. 16.

Also a letter from N. C. Blanchard to Commissioner of the General Land Office at Washington, dated February 1, 1897.

Filed in evidence and marked Defendant Exhibit No. 17.

Counsel for Defendant also offers in evidence a letter from S. L. Lamereaux, United States Commissioner to the Hon. N. C. Blanchard, United States Senate, Washington, D. C., dated February 8th, 1897.

359 Filed in evidence and marked Defendant Exhibit No. 18.

Counsel for Plaintiff objects to the two letters offered in evidence marked Exhibits Nos. 17 and 18, for the following reasons, namely:

1st. That said letters are irrelevant, incompetent and inadmissible to any issue involved in this case;

2d. That if it is contended by the letter in question written by the Commissioner to the Hon. N. C. Blanchard that the Commissioner attempted to disclaim title to the land in controversy, then and in that case the letter is objected to on the ground that the Commissioner of the General Land Office had no power to disclaim title to any part of the Public Domain, Congress alone having the right to dispose of Public Land belonging to the United States;

3d. That in the letter of the Hon. N. C. Blanchard to the Commissioner it is stated in substance that at the time the United Survey was originally made the Lake covered the land and that the gradual receding of the Lake uncovered them and the letter of the Commissioner to the Hon. N. C. Blanchard was written and based upon representations made to the Commissioner;

4th. That the Jeems Bayou Fishing & Hunting Club is estopped to take the position that said lands were formed by the recision of waters of Ferry Lake, for the reason that in the case entitled No. 13,707 of the Docket of First Judicial District Court, Caddo Parish, Louisiana, Jeems Bayou Fishing & Hunting Club vs. Board of Commissioners of Caddo Levee District, said Jeems Bayou Fishing & Hunting Club in an amended and supplemental petition filed in said case refers to part of the land in controversy made the following allegations: "Petitioner represents that the land it possessed and claimed herein is not land that has been formed either in whole or in part since the survey of the Fractional Quarter Section by the United States Surveyors in the long ago," said petition above mentioned having been filed May 14th, 1910.

The objection is over-ruled, same going to its effect.

To which ruling of the Court Counsel for Plaintiff excepts and asks that this note stand in lieu
360 of formal bill of exception.

Counsel for Defendant offers in evidence letter from G. Otis Smith directed to Secretary of the Interior, dated Nov. 6th, 1908, found in Bulletin No. 623 of the Department of Interior, Order of Withdrawal, Petroleum Reserve to be found on pages 114 to 116.

Filed and marked Defendant Exhibit No. 19.

Counsel for the Government objects to the letter which is offered and marked No. 19, if offered for the purpose of showing a dis-claimer of title on the ground and for the reason that same is irrelevant and immaterial to any issue in this case; 2d, for the further reason that the land in suit had not been resurveyed at the time and included in any extension survey at the time said letter was written and that the Jeems Bayou Fishing & Hunting Club is estopped for the reasons enumerated in former objection.

The objection is over-ruled.

To which ruling Counsel for the Government excepts and asks that this note stand in lieu of formal bill of exception.

Counsel for Defendant offers in evidence report of Clay Tallman, Commissioner, to the Secretary of the Interior dated July 9, 1915.

Filed in evidence and marked Defendant Exhibit No. 20.

Counsel for Defendant offers in evidence letter from Hon. John W. Davis, Acting Attorney General, to the Secretary of the Interior dated September 11th, 1916.

Filed in evidence and marked Defendant Exhibit No. 21.

Counsel for Defendant offers in evidence the transcript and record in Supreme Court of United States, being suit No. 165, entitled Producers Oil Company, Plaintiff in Error, vs. Lydia Hanson, et al.

Filed in evidence and marked Defendant Exhibit No. 22.

PROF. — LEVERETT, a witness for the Defendant, being first duly sworn, testifies as follows:

On Direct Examination he says:

361 By Mr. Smith:

Q. Professor I will ask you to examine Messages and Documents War Department, Vol. 23, for the years 1893 and 1894, page 2082, and you will find the high water mark 90 Mooringsport 63.13 elevation Cairo data, now what flow level would that give Ferry Lake?

A. That would have to be computed but from your statement why about 186.

Q. The high water of 1892 at Mooringsport was 63.62, what would that be?

A. That was figured this morning, 188.49.

Q. Now, Stormy Point, which I will show you as being the peninsula in Section Twenty-four as shown on Plaintiff's Exhibit No. 8, now the water is given as 62.23, elevation Cairo data will you figure that and tell us the flow of the River in feet in 1882?

A. 183.85.

Q. So the flow level in 1882 according to the report of the Chief Engineer of the United States War Department shows that the water was 183.85 in Ferry Lake?

A. Yes, sir.

Q. Now do you know where Albany Point was—it shows 61.17 elevation Cairo data, now let us figure that in feet, that was in 1874?

A. 180.3.

Q. In 1866 this report of the Chief Engineer of the United States War Department shows the elevation according to Cairo data as 61.68, now figure that for us?

A. It would be little less than 180, not far from 180.

Q. I will ask you if this report speaks of the high water marks during those years?

A. Yes, sir, the highest that the water reached during those years.

Q. Now state how you arrive at the difference in the elevation between the River at Shreveport and Ferry Lake in answer to some of your questions this morning?

A. For the year 1914 the gauge was read at Mooringsport and showed 174.2 and at Shreveport on that same day the local Forecaster read the gauge here and it was—

362 Counsel for Plaintiff objects to any statement by the witness relative to the forecast made by the Weather Observer, for the reason that said testimony is hearsay and the witness himself is not shown to have made the forecast.

The objection is sustained.

To which ruling Counsel for Defendant excepts and asks that this note stand in lieu of formal bill of exception.

Q. Professor I will show you a report from J. W. Cronk, Local Forecaster, dated Shreveport, March 14th, 1917, now if that reading is correctly shown which showed stage at Shreveport as 23.1 that would be 164.1 level at Shreveport?

A. Yes, sir.

Q. During that year what was the level at Shreveport?

A. 174.2.

Q. What is the difference in feet?

A. The difference is deducting 164.1 from 174.2, which gives 10.1.

Q. So as to show greater elevation in Ferry Lake you would have to add 10.1 to the Shreveport gauge?

A. Yes, sir, from the observation of 1914.

Q. From your Geological studies, would the height of the river at Shreveport and the water at Mooringsport differ?

A. Yes, sir, Shreveport being down stream the gauge here would show lower.

Q. If Mooringsport showed 10.1 above Shreveport, you would think it was falling?

A. Owing to conditions.

Q. Be very slight?

A. Might fall several feet, that of course would depend upon the particular flood.

Counsel for Defendant offers in evidence report of the Secretary of War, Vol. 2, Number 3, for the years 1893, 1894, pages 2081, 2082 and also the Converse table on pages 1994 and 1995.

Marked Defendants Exhibit No. 23.

On Cross Examination he said:

By Mr. Hunter:

Q. Professor, is it not a fact that the basin
363 of Ferry Lake, has a very small drainage basin, as compared with Red River?

A. Yes, sir, a very small per cent.

Q. Is it not also a fact that the elevation of the water of Ferry Lake is not controlled by the elevation of the waters of Red River, as a general rule, especially since the taking out of the raft.

A. It is largely dependent upon its own rain fall, but occasionally Red River will back up into Ferry Lake basin.

Q. So the fact that you find, according to some records the high water elevation at Shreveport, during a certain year, is no proof is it that the water was high in Ferry Lake at the same time?

A. No, the contrary can be proven in certain years, perhaps there would be a flood in Red River and none in Ferry Lake.

Q. Does the barrier, which was formed by the deposit of the red river sediment during the raft period have any affect on the difference in the elevation between the waters of Ferry Lake and the waters of the river?

A. That is what holds the lake back. That is why the lake don't drain. That is why it did not drain when the raft was removed, is that barried of sediment.

Q. Now is it not a fact that all of the reports about which you have been questioned in your examination in chief, are based upon flood stage and not mean water elevation?

A. It is.

Q. These reports deal with extreme flood stage?

A. Yes, sir, the highest stage of the year.

Q. What was the mean high water elevation of Ferry Lake in 1812 and 1839?

A. 173.09 as determined by the Engineers and Surveyors.

Q. The elevation as determined by Mr. Kidder?

A. Yes, sir, using the Army Engineers bench mark and computing the actual height.

Q. The contour of 173.09 represents the mean high water elevation based upon the Army Engineers Bench mark, and that is based upon mean Gulf level?

A. Yes, sir.

Q. In your opinion as a Geologist the 172.00 feet contour, as established by Mr. Kittoe which survey has been affirmed in evidence, is the mean high water elevation of Piney Lake in 1912 and 1939?

A. It is.

Q. Is it not a fact Professor that you as a Geologist can go on that lake and ascertain the mean high water mark, without reference to any town, and without the assistance of a Surveyor?

A. Yes, sir, I can do that by the marks made by the lake itself.

Q. Those marks are in the shape of well defined continuous banks all around the lake?

A. Yes, sir.

Q. Easily discernable to a Geologist?

A. Yes.

Q. The bank is well defined?

A. It is.

Q. It is on the 172.00 foot contour?

A. It is.

Q. I will ask you to state whether or not you are familiar with the land in controversy in this case, lots Eight, Nine and Ten of Section Two?

A. Yes, sir, I have travelled over it several times.

Q. Was that land formed by the recession of the waters of Piney Lake since 1912 or 1939?

A. No, it is old land, and is not due to any building process at any time since the survey was made in 1939, and is not due to accretion.

Q. It has not been formed either by the recession of the waters or accretion since 1912?

A. No, sir.

Q. It is very old land?

A. It is.

Q. Far antedating 1812?

A. Yes, sir, standing above the 173.09 foot contour.

Q. It is well drained?

A. Yes, sir.

Q. The slope is towards the 173.09 foot contour?

A. It is.

365 Q. Is it not a fact that in 1812, the land involved in this suit was land in place, substantially as it exists today?

A. Yes, it stood above the mean high water mark at the time, and it was land in place.

Q. State whether or not the land was in place, and existed as land above the mean high water elevation substantially the same as it does do day, the date referred to is 1839?

A. Yes, sir, it did.

Q. You made a examination, did you not of the land involved in this suit?

A. Yes, sir.

Q. You were present when Mr. Kidder made his preliminary survey in 1913-1914?

A. I was present in 1914 in February, and again in April, 1914.

Q. You have gone over the land involved in this suit, lots eight nine, and ten of Section Ten?

A. Yes, sir.

Q. You have examined the soil?

A. Yes, sir.

Q. State whether or not the soil shows the land was land in place in 1912?

A. Yes, sir, it is original soil formed from the geological formation up land formation.

Q. The soil is not of that character of soil that would be there had the lake covered that land in 1812 or 1839, is it?

A. No, the soil is formed from the underlying formation.

Q. Is it the character of soil that would be there, if it had been occupied by a lake?

A. No, sir, no lake sediment on the territory. The water will take away the soil and make deposits of the sediment in all cases, and when I reached the 180 foot contour, above that I found that there is less removal of certain sediment than below.

Q. If any flood went to 188, I will ask you to state whether or not such flood was very temporary?

A. It was, and was not enough to make any bank or mark that I could trace on the ground, nothing above the 180 foot contour seemed to be long life enough to make this mark.

366 Q. So that the stage that the flood reached above the 180 foot contour, the water would not stay on the ground any appreciable length of time?

A. No. I think from the records of the flood observation and observation it did not.

Q. From your observations of the records of the floods and from your knowledge as a Geologist, you found no evidence of it?

A. No, sir, no evidence whatever, that a Geologist could find.

Q. I will ask you to state this, if the water had got over this land at an elevation of 188 and stayed on the ground any appreciable length of time, would they not have made some evidence or marks on the ground, which a Geologist could identify?

A. It would depend upon what is an appreciable length of time, it would have to be rather a prolonged time to make a mark that would be retained, so that the first storm would not wash it away.

Q. You found no such evidence on the ground?

A. No, sir.

Q. You are familiar, in a general way with Warren's lines, Warrens meander line in Section Ten, are you not?

A. Yes.

Q. You have gone over ever portion of that line?

A. Yes, sir.

Q. Does that line mark on the ground, as run on the ground, denote the border of any body of water, or the banks of any body of water?

A. No, that line, in running from one angle point to another carries you up and down hill. The lines connecting the angle points are not contour lines, being run on the slopes ascending and descending from one to the other.

Q. I will ask you to examine the resurvey plat marked Plaintiff 28, with reference to the Warren meander line in Section Ten, or what purports to be the meander line of Section Ten, joining the land to the west, which is in controversy in this case, and I will ask you to state whether or not that line, as run on the ground represents the bank, or marks the margin of any lake, stream or water course?

A. It does not.

Q. Does it follow the contour of any lake,
367 stream or water course?

A. It does not.

Q. Is it run without regard, or with reference to any stream or water course?

A. Apparently it was.

Q. Without regard to the margin of any stream or water course?

A. It does.

Q. I have been referring to the Warren meander line in fractional Southwest quarter of Section Ten, state whether or not, if that line was run with a view of marking the border of margin of the lake, in your opinion as a Geologist, did the Surveyor err, in so running that line, and representing it as the margin of a body of water?

A. Yes, he did err.

Q. State whether or not, he committed a manifest error, and is it apparent?

A. Yes, sir, it is an apparent error.

Q. It is a manifest error?

A. Yes, sir, it is apparent.

Q. In your opinion, as a Geologist, the error is apparent?

A. It is.

By Master:

Q. Professor, I understood you to say yesterday, that your purpose in visiting this lake shore, and making the study was to find out and establish by Geological evidence the real location of the mean high water mark of the lake in 1839 and 1812?

A. Especially 1812, when Louisiana became a State.

Q. You made these investigations independent of any Surveyor or any Ecologic expert?

A. Yes, sir.

Q. You came to your own conclusion, without reference to what the Ecologist or the Surveyors came to?

A. Yes, sir.

Q. After having established where this line was, in your opinion from this Geological study, you found out afterwards that that co-incided with the survey of the contour of 173.09?

A. Yes, sir, found it out this year.

368 Q. You found it out afterwards?

A. Yes, sir.

Q. Afterwards when you got acquainted with the altitudes and compared these altitudes as given you by Mr. Kidder, you found where he set his stakes coincided with where you found, in your opinion as a Geologist, the evidence of where the lake actually existed, mean high water?

A. Yes, sir.

On Re-Direct Examination he said:

By Mr. Smith:

Q. If you were on some of the high ground in the Northern part of Section Ten, in 1839, and the flood level of Ferry Lake happened to be at 188 or 186, it would have been a very difficult matter to tell where the land was in that part of the country?

A. Under that hypothetical condition it would.

Q. It would have been very easy to make a manifest and apparent error?

A. That may—it is a matter of record what it was.

Q. But, if the Surveyor was out at that time, and that land was under water in that country, would it not have been an easy matter to have made an error in running the traverse line?

A. There is certain evidence that he went down to the level of 173.09. I was very much impressed with that fact when I was on the ground in 1914, that he terminated his lines on the 173.09, and I become convinced that that was the lake when Warren was in there.

Q. If there was high water, anything like 185 or 188, it would have been impossible to have told what the high water was in Section Ten?

A. I think that stage of the water is negatived by the positive evidence that he went down to the 173.09 foot contour. I think that that establishes that the lake was at its ordinary level.

Q. As a rule when the water reaches the flood stages in Red River it likewise reaches flood stage on Ferry Lake?

A. It would come very close to the same dates.

On Cross Examination he said:

369 By Mr. Hunter:

Q. You stated that Warren recognized the mean high water elevation in his survey?

A. Yes, sir.

Q. By terminating his section lines and running some of his meander lines along that course?

A. Yes, I noted that.

Q. That occurred in numerous places in his survey?

A. It did.

Q. You observed that fact and you established, as a Geologist the 173.09 foot contour?

A. Yes, sir. Of course I noted the position where he terminated his lines from the Surveyors, or they showed me where he terminated and I was impressed with the fact that the termination of the section lines coincided with the mean high water elevation of the lake. As a matter of history the identified where he terminated his line and I notes that termination was at the 173.09 foot contour, showing the stage of the lake at the time of the Warren survey was at mean high water elevation.

Q. In your opinion as a Geologist, without reference to surveys or any other data, besides the Geological data, this lake was at mean elevation in 1839, of 173.09?

A. Yes, sir, it was.

Q. You do not think this mean elevation was anything above that at the time that Warren made his survey?

Q. [A.] That is the mean elevation determined of 173.09, that is the mean elevation, and anything above that is flood stage.

Q. In your opinion the lake was not at a higher elevation than that when Warren made his survey?

A. I think that Warren's field notes prove conclusively that it was not, as he terminated on the lake, and the identification of the point that he terminated shows that it was 173.09 or very close to it.

Q. If the lake had been at any stage of an extreme elevation of 180 feet or above, the land that Warren has included in his survey of the Southwest fractional quarter of Section Ten, would have been submerged, or a large portion of it?

A. If up to 180 the greater portion of it would, something less than half, if 180.

370 PROF. FRANK LEVERETT, a witness for Defendant, being recalled, his direct examination was resumed:

On Direct Examination he said:

By Mr. Smith:

Q. Prof. Leverett, you heard Mr. S. P. Harrell, testify that the land in question was crayfish land, in other words that it was largely clay, what have you to say about that, up to the elevation of 180 feet?

A. Yes, it is clay soil.

Q. Well, how can you account for the original soil being off of that part of the land?

A. That is partly because of the sides of the hills, the slopes and partly because it is subject to occasionally submergence due to the rain water running down the slopes, or lake waters washing on the slopes, exposing the clay.

Q. So that the clay would be exposed up to about the 180 foot contour?

A. Yes.

On Cross Examination he said:

By Mr. Hunter:

Q. The greater portion of this area that was omitted by A. W. Warren from his survey is above the 180 foot contour?

A. Yes, sir.

Q. About three-fourths of it?

A. Yes, sir, in this particular land involved in this suit.

Q. All of the land is well drained?

A. Yes, sir.

Q. The slope is towards the 173.09 foot contour?

A. It is.

Q. The land in your opinion, was not a part of the bed of the Lake in 1812 or 1839?

A. No, not what we would call the lake bed.

Q. It was highland, and land in place in 1812 and 1839?

A. It was.

371 MR. JAS. W. NEAL, a witness for the Defendant being first duly sworn testifies as follows:

On Direct Examination he said:

By Judge Story:

Q. Mr. Neal you are in the employ of the United States Government?

A. Yes, sir.

372 Q. You made an examination of the records of the Producers Oil Company as to the production of the wells located on the land in controversy in this suit?

A. Yes, sir.

Q. I will ask you whether or not you have examined the accounts of the production and the statement attached to the answer of the Defendant and another statement annexed to the supplemental answer giving a statement of the production of the oil produced from wells Nos. Five to Eleven inclusive?

A. I examined that statement.

Q. This statement was annexed to the answer?

A. Yes, sir.

Q. I will ask you to look at this sworn statement made of the production and will ask you whether or not you checked those statements with the oil tickets showing the production of these wells from the time that they came in up to the 31st of December, 1917?

A. This statement was taken from the run tickets as to the production of the wells and the exact amount as to a certain part of the time and an estimation as to the time those wells were run with other wells.

Q. Now does that statement show a correct estimate of the production of oil up to the 31st day of December, 1917?

A. Yes, sir.

Q. Did you have an opportunity to check their books and their tickets and checks, etc.?

A. Yes, sir.

Q. You were assisted in that labor by the employees of the Producers Oil Company?

A. Yes, sir, assisted by Mr. Blish and Mr. Hammond.

Q. How did you check the cost of drilling of those wells--did you check that?

A. Yes, sir, in a comparison way, I checked the cost of the drilling and operations.

Q. What did you find?

373 A. I found the statements submitted there as compared to other wells in operation in that vicinity that it cost about the same as drilling and operation.

Q. Now there is one well or probably two wells, but I think it was Well No. 5 that there was a credit given for salvage as against the cost and expense of drilling the well?

A. Yes, sir, wells 5 and 6.

Q. Now that is reflected in this statement?

A. Yes, sir.

Q. You are satisfied that this is about a correct estimate, or about as correct as could be made from their books and statements that you saw?

A. Yes, sir.

Counsel for Defendant offers in evidence document marked Producers Oil Company No. 25.

Q. Now that statement gives as I understand it the production and value of oil as well as the royalty interest, that is gives the amount in barrels and value of the oil and royalties that have been given that was coming to the Jeems Bayou Hunting & Fishing Club?

A. Yes, sir.

On Cross Examination he said:

By Mr. Hunter:

Q. Mr. Neal, you are Special Agent of the General Land Office?

A. Yes, sir.

Q. You made this examination of the records of the Producers Oil Company at my request did you not?

A. Yes, sir.

Q. With a view of ascertaining the correct production of the wells involved in this suit?

A. Yes, sir.

Q. I show you the statement about which you have been questioned which is marked Producers Oil Company No. 25, and will ask you to state what the statement shows with respect to total production from the time the wells involved in this suit were drilled up to January 1st, 1918, both in barrels and in amount?

374 A. The statement shows that a total of two hundred forty-seven thousand three hundred and forty-eight and 22/100 barrels of oil was taken from wells Nos. Five and Eleven inclusive, as shown by the run tickets, when those wells were run together and as an estimation when the wells were operated with wells Nos. One to Four on the same lease, the value of the oil is shown to be Two Hundred Ninety-three Thousand Two Hundred and Thirty-four dollars eighteen cents.

Q. That is to December 31st, 1917?

A. Yes, sir.

Q. Now what does this statement show with regard to the value of royalties paid the Jeems Bayou Hunting & Fishing Club?

A. According to the records of the companies involved the Jeems Bayou Hunting & Fishing Club have received one-eighth of the oil run from the wells which is shown on this account as thirty-six thousand six hundred fifty-four dollars and twenty-seven cents, but a part of this amount has been paid to the Club Company and a part of it is now held by the Texas Company.

Q. One of the Defendants herein?

A. Yes, sir, one of the Defendants.

Q. Do you know what amount is now being held by the Texas Company for the account of the Jeems Bayou Hunting & Fishing Club?

A. I do not.

Q. Mr. Neal, from your investigation of this subject are you satisfied that the statement marked Producers Oil Company No. 25 shows the production from the wells in controversy to January 1st, 1918, both as to the number of barrels and value of the oil is correct?

A. I am satisfied it is correct.

Q. The original answer and the answer of the defendant to the interrogatories in this case show smaller production than is shown on this document No. 25?

A. Yes, sir, slightly smaller.

Q. The amount shown on this statement though as to quantity and the value is correct?

A. It is correct.

Q. Now these amounts were arrived at were they not by a re-checking of the records by yourself
375 and employees of the Producers Oil Company?

A. They were.

Q. Now, referring to the counter claim of the Producers Oil Company have you checked their figures submitted according to the statement and made an investigation as to their correctness?

A. I have.

Q. Do you find those figures correct?

A. I find them to be approximately correct as near as I can get at it.

Q. For the information of the Court I will ask you to examine statement marked Defendant No. 25 and state the amount of the counter-claim as shown by that statement after all deductions have been made?

A. The counter-claim which includes the cost of drilling each of the wells involved in this suit and the cost of operating them shows a sum total of one hundred thirteen thousand nine hundred and twelve dollars forty-five cents ($113,912.45) and the value of oil produced from the land in suit according to the statement is two hundred ninety-three thousand two hundred thirty-four dollars and eighteen cents ($293,234.18).

On Re-Direct Examination he said:

By Mr. Smith:

Q. I see here that you have it that the expense and cost of drilling and operating is one hundred fourteen thousand one hundred and twelve dollars and eighty-five cents ($114,112.85) on the statement, now how do you reconcile that with the statement that you have just given?

A. The reason that the cost of operation of Well No. 5 during the month of April, 1917, was charged in the counter-claim while Well No. 5 ceased to produce on March 28th, 1917, and therefore the cost of operating Well No. 5 for the month of April which is given as two hundred dollars and forty cents was erroneously charged and that account here shows this two hundred dollars and forty cents deducted from—added to one hundred forty-two thousand four hundred sixty-six dollars and six cents ($142,466.06.)

376 Q. Then that statement is correct and shows just the amount expended for drilling wells

and operating wells up to the 31st of December, 1917, to be one hundred forty-two thousand six hundred and sixty-six dollars and forty-six cents ($142,666.46).

A. The total value of all the oil taken from the wells in this suit is two hundred ninety-three thousand two hundred thirty-four dollars and eighteen cents ($293,234.18) of this the Louisiana Riverton Hunting & Fishing Club have received as royalty thirty-six thousand six hundred fifty-four dollars and twenty-seven cents ($36,654.27), the part of the value of the oil as retained by the Producers Oil Company is two hundred fifty-six thousand five hundred seventy-nine dollars and ninety-one cents ($256,579.91) the total counter-claim including the cost of drilling the well and operating same is one hundred thirteen thousand nine hundred and twelve dollars forty-five cents ($113,912.45) the statement of the total counter-claim as shown by this Exhibit marked Exhibit No. 25 is one hundred fourteen thousand one hundred and twelve dollars and eighty-five cents ($114,112.85) and contains an item of two hundred dollars and forty cents for the operation of Well No. 3 during the month of April, 1917, while as a matter of fact well No. 3 ceased to produce oil on March 20th, 1917, and the amount of two hundred dollars and forty cents ($200.40) is shown on the statement as an erroneous charge in the counter-claim.

Q. Now what are those statements that are attached to the supplemental statement?

A. Page No. 2 shows the salvage of tools from Well No. 6 after that well ceased to produce; page No. 4 is the salvage of tools from Well No. 3 after that well ceased to produce; pages 5 to 14 shows the amount of oil run from Wells 3 to 11 while those wells were operated to themselves and the value of the oil on the basis on which the several runs and the division of oil as between the parties at interest; pages 15 to 20 show the

gross amount of oil, the royalty interest, the price in oil on the date of the several runs when wells from five to eleven were run in conjunction with wells Nos. 1 to 4, Wells Nos. 1 to 4 not being involved in
377 this suit and an estimate of the amount of oil run from the wells in this suit.

Q. Now with whom did you check up the statements as to the production with the Producers Oil Company?

A. Mr. Blish and Mr. W. A. Hammond.

On Re-cross Examination he said:

By Mr. Hunter:

Q. Mr. Neal as I understand it the wells referred to on this statement being Nos. 5 to 11 inclusive are situated on the land involved in this suit?

A. They are.

Q. Were those wells drilled by the Producers Oil Company?

A. According to their records they were.

Q. Do you know from the records when they were drilled or does the statements show?

A. The statement don't show, the records show that the Jeems Bayou Hunting & Fishing Club Well No. 5 was completed on October 14th, 1912.

Q. Does the record show when they were begun?

A. No, sir, well No. 6 was completed on November 2d, 1912; Well No. 7 was completed December 13, 1912; Well No. 8 was completed on January 13th, 1913; Well No. 9 was completed on January 28, 1914; Well No. 10 was completed on March 4, 1914, and Well No. 11 was completed on February 2, 1916.

Q. Mr. Neal, how was the value of oil as shown by the statements filed in evidence and marked No. 25 arrived at, upon what is that value based?

A. The value is the list price of the oil on the date that the runs were made when the oil was taken by the Pipe Line Company.

Q. State whether or not the records show that the oil in question was delivered by the Producers Oil Company to the Texas Company at that price?

A. The records don't disclose the price, but the price was taken from the price as listed by the Texas Company on those dates when the runs were made.

Q. State whether or not the records show that the oil shown by statement No. 25 was delivered
378 by the Producers Oil Company to the Texas Company?

A. It shows such a delivery.

Q. Mr. Neal the statement marked Defendant No. 25 shows that the Producers Oil Company purchased the amount of oil as shown thereon does it not?

A. Yes, sir.

Plaintiff's evidence resumed in chief.

It is admitted by and between counsel for Plaintiff and Defendants that the Wells Nos. 5 to 11 inclusive were drilled by the Producers Oil Company on the land in controversy and that all of said wells were drilled subsequent to the date of the lease from the Jeems Bayou Hunting & Fishing Club to the Producers Oil Company, viz: Oct. 17th, 1910.

It is admitted that the Producers Oil Company delivered to the Texas Company 247,348.27 barrels of oil taken by the Producers Oil Company from the land in controversy of the value of two hundred ninety-three thousand two hundred thirty-four dollars and eighteen cents ($293,234.18) said amount being shown by Defendant's Exhibit No. 25, page one thereof.

gross amount of oil, the royalty interest, the price in oil on the date of the several runs when wells from five to eleven were run in conjunction with wells Nos. 1 to 4, Wells Nos. 1 to 4 not being involved in this suit and an estimate of the amount of oil run from the wells in this suit.

377

Q. Now with whom did you check up the statements as to the production with the Producers Oil Company?

A. Mr. Blish and Mr. W. A. Hammond.

On Re-cross Examination he said:

By Mr. Hunter:

Q. Mr. Neal as I understand it the wells referred to on this statement being Nos. 5 to 11 inclusive are situated on the land involved in this suit?

A. They are.

Q. Were those wells drilled by the Producers Oil Company?

A. According to their records they were.

Q. Do you know from the records when they were drilled or does the statements show?

A. The statement don't show, the records show that the Jeems Bayou Hunting & Fishing Club Well No. 5 was completed on October 14th, 1912.

Q. Does the record show when they were begun?

A. No, sir, well No. 6 was completed on November 2d, 1912; Well No. 7 was completed December 13, 1912; Well No. 8 was completed on January 13th, 1913; Well No. 9 was completed on January 28, 1914; Well No. 10 was completed on March 4, 1914, and Well No. 11 was completed on February 2, 1916.

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A. The value is the list price of the oil on the date that the runs were made when the oil was taken by the Pipe Line Company.

Q. State whether or not the records show that the oil in question was delivered by the Producers Oil Company to the Texas Company at that price?

A. The records don't disclose the price, but the price was taken from the price as listed by the Texas Company on those dates when the runs were made.

Q. State whether or not the records show that the oil shown by statement No. 25 was delivered
378 by the Producers Oil Company to the Texas Company?

A. It shows such a delivery.

Q. Mr. Neal the statement marked Defendant No. 25 shows that the Producers Oil Company purchased the amount of oil as shown thereon does it not?

A. Yes, sir.

Plaintiff's evidence resumed in chief.

It is admitted by and between counsel for Plaintiff and Defendants that the Wells Nos. 5 to 11 inclusive were drilled by the Producers Oil Company on the land in controversy and that all of said wells were drilled subsequent to the date of the lease from the Jeems Bayou Hunting & Fishing Club to the Producers Oil Company, viz: Oct. 17th, 1910.

It is admitted that the Producers Oil Company delivered to the Texas Company 247,348.27 barrels of oil taken by the Producers Oil Company from the land in controversy of the value of two hundred ninety-three thousand two hundred thirty-four dollars and eighteen cents ($293,234.18) said amount being shown by Defendant's Exhibit No. 25, page one thereof.

It is further admitted that the statement filed in evidence and marked Deft. No. 25, page one thereof, is true and correct and shows the number of barrels of oil produced by the Producers Oil Company from the land in suit and its value, the quantity of oil being 247,348.22 barrels of the value of two hundred ninety-three thousand two hundred thirty-four dollars and eighteen cents ($293,234.18).

Counsel for Plaintiff offers in evidence the Interrogatories and the answered thereto propounded by the Government to the Producers Oil Company and the Texas Company and this offering is made without prejudice to the admissions hereinabove set forth, the amount and facts shown by said admission having been determined by the rechecking of the records since the interrogatories were propounded and answered.

379 PROF. LEVERETT, being called by the Defendant and first duly sworn, testified as follows:

On Direct Examination he said:

By Mr. Smith:

Q. Professor Leverett you heard Mr. Cronk testify today that the river, Red River, would begin to fill the Bayou and overflow at 162, is that about your idea as far as you have been able to determine from your geological observation?

A. That was my own estimation when I was here in 1914 that the Bayous opening into Red River were about 162 at Shreveport and very slightly higher east of Mooringsport.

Q. 173.09 on the level of Ferry Lake there is a difference of eleven feet in the two elevations?

A. Well that was in the raft stages and you take 164 in Soda Lake that will be the level of the post raft stage.

Q. Now in the raft period the difference was about eleven feet?

A. I have no means of knowing exactly what Shreveport was during the raft stage, I know what was Ferry Lake and I know Soda Lake was 164 and I think that the Bayous opening into Red River were about one foot lower.

Q. A foot lower would be 163?

A. Yes, sir.

Q. There is eleven feet difference?

A. No, sir, not quite.

Q. Shreveport is eleven feet lower?

A. Yes, sir at present as to the River but the Bayous are about 162.

By Master:

Q. You were asked to give what was the mean high water elevation of Red River in 1839, now you have given it with respect to Ferry Lake?

A. Yes, sir, I gave it the other day, the high water of Ferry Lake and where the Freeman Curtis Expedition came into Red River in 1806, and I don't think it was any lower in 1839.

Q. Now that was about 180 foot height of the water of Red River opposite Shreveport in 1806 that 180 foot as we figured it out?

A. That had nothing to do with the Mooringsport high water that is classed as the mean high
380 water and it may have been a little below the leven when they came in there as they were there in June.

Q. Now that corresponds with Red River 173 on Ferry Lake?

A. Yes, sir.

Q. That is during the raft period?

A. Yes, sir.

Q. You have not assumed to give the relative altitudes since the raft days?

A. No, sir, I think that was in answer to Mr. Smith's question 170 in the raft period directly east where the Freeman Curtis Expedition came in or more nearly matched the 173.09 in the Lake.

Q. You have not assumed to give what was the relative altitudes since the raft in Red River and the elevation of Ferry Lake?

A. No, sir.

Q. You are not able to give that?

A. No, sir, in fact the dam is holding Ferry Lake up now.

Q. You do not assume to give that?

A. No, sir.

On Cross Examination he said:

By Mr. Hunter:

Q. In comparing the waters of Red River and Ferry Lake there is a difference in elevation that you figure of about eleven feet, the difference between 163 and 173.09?

A. Well, yes, sir, during that period but under present conditions the river has fallen about ten feet in crossing the two townships and Shreveport is south of Mooringsport and there is about that much descent in the Twelve Mile Bayou.

381

4-207.

360070
"B"
CRGO

Department of the Interior.

General Land Office.

Washington, D. C.

January 14, 1918.

I hereby certify that the annexed copy of office letter dated September 27, 1913, is a true and literal exemplification from the press copy on file in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

D. K. PARROTT,
Acting Assistant Commissioner of
the General Land Office.

(PLAINTIFF'S EXHIBIT NO. 1—LETTER SEP. 27, 1913, COMMISSIONER TO ARTHUR D. KIDDER).

360070-1 B

In reply please refer to ...."E" CLDB
09-122623

F C H
D M G

Department of the Interior,

General Land Office.
Washington, D. C.

Address only the
Commissioner of the
General Land Office.

September 27, 1913.

Special Instructions.

Re-examination and surveys in T. 20 N., R. 16 W., Louisiana Meridian, "Ferry Lake", Louisiana.

Mr. Arthur D. Kidder,
Supervisor of Surveys,
General Land Office.

382 Sir:

Pursuant to instructions contained in letter of the First Assistant Secretary of the Interior, dated September 3, 1913, you are directed to proceed, with the least possible delay, to T. 20 N., R. 16 W., Louisiana Meridian, Louisiana, and there make a careful examination of the original surveys of the exterior, subdivisional and meander lines of said township and such additional

land, topographic and hydrographic surveys as may be necessary to accurately and minutely carry out the instructions contained in the above-named letter, a copy of which is handed to you herewith.

Limits and Character of Work.

This assignment provides for the necessary field examination to definitely determine the position of the original meander line of Ferry Lake with relation to the exterior and subdivisional lines of T. 20 N., R. 16 W., including the Louisiana-Texas boundary line, as shown upon the official plats approved August 31, 1839, July 24, 1846, March 31, 1854, August 18, 1871, and May 29, 1896, and to further determine, if possible, the relation of said lines to the area actually covered by the waters of Ferry Lake in 1912, in 1839 and at the present time.

You will cooperate with Mr. C. C. Matson, Associate Geologist, assigned by the Director of the U. S. Geological Survey, in making an exhaustive investigation of such evidence as may now exist bearing upon the locus of the lake in 1812 and 1839, and carefully consider and report upon all evidence of geological, topographical and hydrographical character, physical conditions respecting timber growth both past and present, within and without the surveyed meander line, including the testimony of persons long acquainted with the locality, to the end that every ascertainable fact may be reported to the Secretary of the Interior upon which may be based
383 his answers to the questions (first) did Ferry Lake exist as a navigable body of water, in the year 1812, when Louisiana was admitted into the Union; (second) did Warren's survey correctly meander Ferry Lake as it existed at the date of the admission of Louisiana into the Union? Before the second question can be

answered it is vitally important to determine whether or not Deputy Warren correctly meandered Ferry Lake as it existed in the year 1839, when his survey was executed.

Data.

For your guidance in making the examination, survey and investigation herein provided for, you will be furnished with photolithographic copies of all official plats of Ts. 19, 20 and 21 N., Rs. 15 and 16 West (twelve in number), and complete transcripts of the field notes of the official surveys of the exterior, subdivisional and meander lines of T. 20 N., R. 16 W., including the Louisiana-Texas boundary line and the contiguous exterior, subdivisional and meander lines of the adjoining townships.

Method and Order of Procedure.

Your first duty in the field will be to identify the evidence of the existing monuments of the original surveys, and thereafter to neglect no evidence offered by property corners, Court records, local surveyors and citizens able to give clear and convincing testimony tending to the recovery of obliterated corners. All identified and recovered corner points will then be remonumented in their respective original positions. You will thereaf-
384 ter reestablish all lost corners by proportionate measurement, following strictly the provisions of the pamphlet on "Restoration of Lost or Obliterated Corners", revision of June 1, 1909.

The next step in the field will be the fixation of the original meander line as returned in the official field notes. A retracement will be made based upon the courses and distances so returned in the original field notes, and the closing error determined; the errors in latitude and

departure will then be distributed along each course in proportion to the lengths thereof. The several angle points along the reestablished meander line will be perpetuated by suitable monuments.

While the above examination and survey are in progress it may be presumed that the geologist will be engaged in developing evidence relative to the true locus of the area covered by the waters of Ferry Lake in 1812 and 1839.

All points of definite geological or historical interest will be carefully located with respect to the restablished survey monuments, and such additional topographic and hydrographic surveys will be made, as may be deemed advisable and helpful towards the ultimate answers to the questions herein set forth, including the datum reference of the elevation of the surface of Ferry Lake above mean Gulf level.

Returns.

You will be required to submit the usual complete field notes of the resurvey and to prepare a correct resurvey plat of T. 20 N., R. 16 W., upon which plat will be mapped all points of historical interest and all features of topographical and hydrographical importance developed in your survey.

Your field notes and plat will be supplemented by such general report of your field operations and observations as may be necessary to fully place before the Department all ascertainable facts relevant to the subject
385 matter of this assignment.

Interested Parties.

You are directed to permit authorized representatives of the State of Louisiana, interested property owners or claimants, or their attorneys or surveyors, to be present during the progress of your field work, and to explain

to them, if requested, the significance of any monument established by you, or of any line projected by you for the purpose of carrying out these instructions.

Should any objection be raised to the course pursued, the same should be filed in writing with you to be carefully considered and forwarded with your report with such comments thereon as you may desire to submit.

Very respectfully,

C. M. BRUN,
Commissioner.

9-25 JMB

Indorsed:—Plaintiff 1—R. B. Cook, Stenographer. Filed Jan. 21, 1919.

386 4-207.

360070 Department of the Interior,
"B" General Land Office,
CRGO Washington, D. C.

(PLAINTIFF'S EX. No. 2—LETTER FROM COMMISSIONER TO KIDDER, OF DATE DECEMBER 1st, 1916).

January 14, 1918.

I hereby certify that the annexed copy of office letter dated December 1, 1916, is a true and literal exemplification from said letter on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

(Seal) D. K. PARROTT,
Acting Assistant Commissioner of the General Land Office.

360070-1 A

09—122623 "E" CGT.
Department of the Interior,
General Land Office,
Washington, D. C.

EFDB

December 1, 1916.

Address only the
Commissioner of the
General Land Office.

Special Instructions: Ferry Lake Surveys, Louisiana.

A G O
W H
D M G

Arthur D. Kidder:
Supervisor of Surveys,
General Land Office.

Sir:

I hand you herewith copies of the following letters relating to surveys in T. 20 N., R. 16 W., Louisiana Meridian, in the Ferry Lake oil field, Caddo Parish, Louisiana:

387 Office letter "09-122623 "FS" DMG.," dated October 5, 1916, to the Chief of the Surveying Division;

Departmental letter dated September 21, 1916, to this office; and,

Acting Attorney General's letter dated September 11, 1916, to the Secretary of the Interior.

You will observe in the above letters that the survey has been ordered of the uplands lying between the erroneous original meander line of Ferry Lake, as surveyed by A. W. Warren, D. S., in 1839, and Byron B. Bristol,

D. S. in 1871, and the contour 173.09 feet above mean gulf level, which contour represents the actual mean high water elevation of the lake in 1812, when Louisiana was admitted into the Union, and in the year 1839, when T. 20 N., R. 16 W., was originally subdivided. You are accordingly directed to proceed to the field at the earliest practicable date and accomplish the required surveys, in person, or with such assistants operating under your personal direction, as may be necessary to bring about an early completion of the field work and prompt filing of the returns.

There are also handed to you herewith two tracings indicating the exact position and extent of the uplands which are to be surveyed, embracing the tracts, omitted from the original surveys, involving, in the opinion of the Department, manifest error or material variation between the Warren and Bristol meander lines of Ferry Lake and the actual mean high water elevation of 1812, said tracings bearing titles as follows:

"Supplemental Plat of T. 20 N., R. 16 W.," and,
"Supplemental Topographic Plat of T. 20 N., R 16 W."

388 The new section, subdivision-of-section, connecting and meander lines, indicated upon the above described tracings, will be established and monumented. The new monuments to be established will consist of the regulation iron posts, 3 inches diameter (uniformly), suitably witnessed with bearing trees, and you will also replace with iron posts of the same size any corners of the resurvey executed in 1913 and 1914, marking the boundary of the lands to be surveyed, as you may find to have been destroyed since the date of said resurvey.

You will operate with Hon. G. W. Jack, United States Attorney, Department of Justice, and with D. R. Thompson, Mineral Inspector, this office, in the preparation of such maps and other technical data and records as may be required at the trial of the suits to be instituted by the United States against the various oil companies which have trespassed upon the areas which are to be surveyed under the instructions herewith.

Very respectfully,

(Signed) CLAY TALLMAN,
Commissioner.

Dec. 5, 1916.

Approved:

ALEXANDER VOGELSHUP,
First Assistant Secretary.

11-18 nnk
-3-

Indorsed:—Plaintiff 2. R. B. Cook, Stenographer. Filed Jan. 21, 1919.

Note:—The following Exhibits, appearing in the transcript of the record at pages 389 to 394, inclusive, are omitted from the printed record, and are filed in the original, pursuant to the stipulation of counsel copied at page one hereof:

Plaintiff's Exhibit No. 3—Plat of T. 20 R. 16 W., Warren's Survey in 1839.

Plaintiff's Exhibit No. 4—Plat of T. 20 N. R. 16 W., Bristol's Survey in 1871.

Plaintiff's Exhibit No. 8—Plat of T. 20 N. R 16 W.—Resurvey Plat, approved July 24, 1916.

Plaintiff's Exhibit No. 9—Supplemental Plat of T. 20 N. R. 16 W., approved March 28, 1917.

Plaintiff's Exhibit No. 10—Supplemental Topographic Plat of T. 20 N. R. 16 W., approved March 28, 1917.

Plaintiff's Exhibit No. 12—Supplemental Topographic Plat of T. 20 N. R. 16 W., approved March 28, 1917.

389-390-391-392-393-394.

* * * * * * * *

395 4-207.

DMG—"FS"
"B"
CRGO

Department of the Interior,
General Land Office,
Washington, D. C.

January 16, 1918.

I hereby certify that the annexed extract copy of Louisiana tract book, so far as it shows section 10, T. 20 N., R. 16 W., Louisiana Meridian, is a true and literal exemplification from the tract book on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

(Seal) D. K. PARROTT,
Acting Assistant Commissioner of
the General Land Office.

PLLFT'S. EX. No. 19.

4-600

Township No. 20 N., Range No. 16 W., District of Natchitoches, La.

(Offered at Sale on the 27th Jany., 1840).

Tp withdrawn from all disposal, by Secty. Dec. 15, 1908. See "A" to R. & R. Natch.; Dec. 15, 1908. Petroleum Reserve No. 4, Ex.

Resurvey (or Restoration survey) Plat approved July 24, 1916, (no areas shown original plat governs)

Suppl. Plats (sheets 1 and 2) of part of Tp. approved March 28, 1917, received in local office Baton Rouge.

Order July 2, 1910, Letter "X" July 16, 1916—54239.
April 14, 1917—745008.

Verified.

Description of Tract.

Part of Section—Section—Township—Range—Contents, acres 100ths—Rate per Acre, Dollars, Cents—Purchase money, Dollars, Cents—Name of Purchaser—Date of Sale—Number of Receipt and Certificate of Purchase—To whom Patented—Date of Patent—Where Recorded, Volume, Page.

N E qr. 160; 10; 20; 16;
NW frl or Lots 1, 2 and 3; 289.88.
12724.

Hd. 10.00; Sallie Curtis; Jan. 22, 1895; 6077; Amended to N W frl ¼ or Lots 1, 3, 23, 1896—84764 F. C. 3758 Feb. 5/01.

N W fr. qr. 51.00; Sel by State as swamp Act 1849 on Aug. 18,1871; List 12 (Posted June 1, 1897) Rejected Mch. 10, 1899, by letter "K."

Lot 6—31.67.

W ½ N E ¼ and Lot 5; 103; 10; Thaddieus W. Marshall, Jany. 13, 1896; 6385; E ½ S W ¼ or S W frl. & Cancd Reg. Rec. Aug. 3, 1896. Amended to W ½ N E ¼ & Lot 5, '96—116357 Apl 21, 1897; F. C. 2789.

Lot 7—12.72.

SE fr. qr. 2300, S E 4; Allow no disposition of this tract—See "C" July 11/91.

Lot 8—40.20

Lot 9—38.82.

Hd. E½ N E ¼; see sec. 11. No. 6754.

S W frl. ¼; 2300; 1.25; 28.75; Stephen D. Pitts, 1860; April 2d, 16563.

Lot 10—6.20.

S W frl. qr. 55.88.

N E 4 160 acres Plat May 29, '96.

Lot 1-48 acres Plat N W 4 N W 4.

Lot 2- 28.24 acres or S W 4 N W 4.

Lot 3-51 or E 2 N W 4.

55.88 or S W frl.

or S E frl.

Indorsed:—1157—J. B. F. and H. C. Plaintiff's 19, R. B. Cook, Stenographer. Filed Jan. 21, 1919. J. D. McClure, Cf. Dy. Clerk, U. S. District Court, West. Dist. of Louisiana.

396

PLTFF'S EX. 20.

Township No. 20 N., Range No. 16 W., District of Natchitoches.

Description of Tract.

Petroleum Reserve No. 4 Ex Order July 2, 1910

Part of Section—Section—Township—Range—Contents, Acres, 100ths; Rate per Acre, Dollars, Cents,—Purchase Money, Dollars, Cents—Name of Purchaser—Date of Sale—Number of Receipt and Certificate of Purchase—To Whom Patented—Date of Patent—Where Recorded, Volume, Page.

4; 20 N; 16 W;

Fracl. Section 4; 20 N; 16 W; 1.25; Selected for State under Act March 2d, 1849; "B" 12/26/16. Claim of State rejected per Comr's. letter "K" dated July 26, 1895.

5; 20 N; 16 W;

W ½ of N W 4 and N ½ of N E 4; 5; 20 N; 16 W; 144.00; Selected for State under Act March 2, 1849. Approved by Secty. of the Interior Augt. 1/54, See List No. 1.

9; 20 N; 16 W;

N E 4 of NE 4; 9; 20 N; 16 W; 40.00 Approved as Swamp and overflowed lands to the State of Louisiana. List No. 81. Secy. of the Interior June 12/900 L 2015.2231.

7; 20 N; 16 W;

All of Section 17; 20 N; 16 W; 496.45; Selected for State under Act March 2, 1849.

N W 4 of N E 4, S E 4, and E2, S W 4; 17; 20 N; 16 W; 416.45; Selected for State per Act March 2, 1849. Approved by Secty. of the Interior Augt. 1/54, List No. 1.

N W 4; 17, 20 N; 16 W; 160.00; Approved to State under Act 3/2/49 on Aug. 1, 1854. See Supplemental List No. 1.

W ½ of S W ¼; 17; 20 N; 16 W; 80.00; Selected by State under Act 2d March, 1849. Appd. by Secy. Interior 14th Jany. 1860.

United States Land Office,

Baton Rouge, La.

Feby. 9th, 1918.

It is hereby certified that the above and foregoing is a full, true and correct showing of the State Selections and approvals in T. 20 N., R. 16 W., La. Mer., as shown by our tract books.

E. D. GIANELLONI, Register.

Indorsed:—Plff. 20. R. B. Cook, Stenographer. Filed Jan. 21, 1919, J. D. McClure, Cf. Dy. Clerk, U. S. District Court, West. Dist. of Louisiana.

B.

1157—52

397 PLTFF EX 21.

Township No. Twenty North, Range No. Sixteen West, N. W. District, La.

Verified.

Description of Tract

Part of Section—Section—Township—Range—Area, Acres, 100th—Character of Land Selected—Approved—Purchaser—Date of Sale—No. of Certificate—Description—Section—Area, Acres, 100th; Amount; No. of Patent; Recorded, Vol., Page.

All frl. 4; 20; 16; 125.00; Swamp; 18 May/52; Rejected.
N ½ of NW ¼, N ½ of NE ¼; 5; 20; 16; 144.00; Swamp; 18 May 1 Aug/54.
NE ¼ of NE ¼; 9; 20; 16; 40.00; Swamp; 18/Aug./61; List No. 81, June 12, 1900.
Lot 1; 10; 20; 16; 48.00; Swamp; 18/Aug./61.
All frl. 17; 20; 16; 496.85; Swamp; 18 May/52.
NW ¼, NE ¼, SE fl ¼, E ½ of SW ¼; 17; 20; 16; 416.45; Swamp; 18 May/52; 1 Aug./54.
W ½ of SW¼; 17; 20; 16; 80.00; Swamp; 18 May/52; 14 Jan./60.

State Land Office.
Baton Rouge, La., Feby. 19, 1918.

I hereby certify that this copy is a true and literal exemplification of the record to which it purports to relate, now on file in this office.

(Seal)

FRED J. GRACE.
Register State Land Office.

Pl. 21. R. B. Cook, Stenographer. Filed Jan. 21, 1919. J. D. McClure, Cf. Dy. Clerk, U. S. District Court, West. Dist. of Louisiana.

B.

1157-53

398 Register of State Land Office,
State of Louisiana.
Baton Rouge.

Fred J. Grace, Register.

(PLAINTIFF'S EX. NO. 22—RECORDS U. S. SURVEYOR GEN'S. OFFICE SHOWING SWAMP SELECTIONS IN T. 20).

I hereby certify the hereto attached papers to be correct copies from the records of the late U. S. Surveyor General's Office, Louisiana, now a part of the records of this office.

Witness my hand and official seal this 9th day of February, A. D. 1918.

FRED. J. GRACE,
(Seal) Register State Land Office.

Northwestern District Louisiana.

List of Swamp and Overflowed land selected from the approved field notes of B. B. Bristol, U. S. Dept. Surveyor of surveys in T. 20 N. R. 16 W., Northwestern District, Louisiana, accruing to the State of Louisiana under the provisions of an Act of Congress approved March 2d,

1849, excepting such portions thereof as are rightfully claimed or owned by individuals.

T. 20 N. R. 16 W.

Parts of Section	Sec.	Area	Remarks.
NE¼ of NE¼	9	40.00	Additional to that
Lot No. 1	10	48.00	appr. May 18th, 1852.
Total		88.00	

Office of Surveyor General.
District of Louisiana.

New Orleans, La., August, 1871.

Examined and approved.

(Signed) E. W. FOSTER,
Surveyor General, La.

Rejected—See Commissioner's Letter of February 28th, 1872.

399

Northwestern District, La.

List of swamp lands, unfit for cultivation, selected as enuring to the State of Louisiana, under the provisions of an Act of Congress, approved 28th, September, 1850, excepting such as are rightfully claimed or owned by individuals.

Part of Section	Section	Area	Remarks

T. 20 N. R. 16 W.

All of Fract	4	1.23
The N ½ of NW ¼—the N½ of NE ¼ of	5	144.00
All of Fractl.	17	496.45

Surveyor General's Office.

Donaldsonville, La., May 18th, 1852.

Examined and approved.

(Signed) R. W. BOYD,
Surveyor General, La.

Surveyor Generals' Office.

Donaldsonville, La., July 5th, 1865.

The selection embraced in the foregoing lists of swamp lands in the Northwestern District, La., were erroneously reported as enuring to the State of Louisiana under the Act of 28th Sept., 1850, instead of under the Act of 2d March, 1849, by which latter act the same were granted. This certificate is to be considered as correcting selections under the law last above named.

(Signed) WM. J. McCULLOH,
Sur. Gen., La.

Indorsed:—Pl. 22. R. B. Cook, Stenographer. Filed Jan. 21, 1919.

400 Department of the Interior,
General Land Office,
Washington, D. C.

November 8, 1917.

I hereby certify that the annexed copy of letter dated December 15, 1908, is a true and literal exemplification from the press copy on file in this office.

In witness whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

D. K. PARROTT,
(Seal) Acting Assistant Commissioner
of the General Land Office.

(Withdrawal Order of Dec. 15, 1908—Pltff's Ex. 23).

File.

Department of the Interior,
General Land Office,
Washington, D. C.

December 15, 1908.

Address only the Commissioner of the General Land Office.

See, also, 1910-44655.

Register and Receiver,
Natchitoches,
Louisiana.

Sirs:

To conserve the public interests, and, in aid of such legislation as may hereafter be proposed or recommended the public lands in Townships 15 to 23 North, and Ranges

10 to 16 West, Louisiana Meridian, Natchitoches Land Office, Louisiana, are, subject to existing valid claims, withdrawn from settlement and entry, or other form of appropriation.

Respectfully,
FRED DENNETT,
Commissioner.

Approved:

JAMES RUDOLPH GARFIELD,
Secretary.

401 Indorsed:—Pl. 23. R. B. Cook, Stenographer. Filed Jan. 21, 1919.

402 Department of the Interior,
General Land Office,
Washington, D. C.

November 8, 1917.

I hereby certify that the annexed copy of order of withdrawal, Petroleum Reserve No. 4, approved July 2, 1910, is a true and literal exemplification from the original order of file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

D. K. PARROTT,
(Seal) Acting Assistant Commissioner of the General Land Office.

(WITHDRAWAL ORDER OF JULY 2, 1910—PLTFF'S EXHIBIT NO. 24).

ECF

dmg-1 fs

:q 54239 :

Jul 9, 1910.

Department of the Interior,
United States Geological Survey,
Washington.

Office of the Director July 1, 1910.

The Honorable,

The Secretary of the Interior.

Sir:

In accordance with your instructions I recommend the withdrawal for classification and in aid of legislation affecting the use and disposition of petroleum deposits belonging to the United States of the following areas in the State of Louisiana, involving approximately 314,720 acres.

403 ORDER OF WITHDRAWAL.

Petroleum Reserve No. 4.

It is hereby ordered that that certain order of with-

403 Petroleum Reserve No. 4, p. 2.
dmg—2 fs

drawal heretofore made on December 15, 1908, insofar as the same includes any of the lands hereinafter de-

scribed, be, and the same is hereby ratified, confirmed, and continued in full force and effect; and subject to all of the provisions, limitations, exceptions, and conditions contained in the act of Congress entitled "An Act to authorize the President of the United States to make withdrawals of public lands in certain cases", approved June 25, 1910, there is hereby withdrawn from settlement, location, sale, or entry, and reserved for classification and in aid of legislation affecting the use and disposal of petroleum lands belonging to the United States, all of these certain lands of the United States set forth and particularly described as follows, to-wit:

Louisiana Principal Meridian, Louisiana

T. 17 N., R. 10 W., all of township.
T. 18 N., R. 10 W., all of township.
T. 18 N., Rs. 14 to 16 W.
T. 19 N., Rs. 14 to 16 W.
T. 20, N., Rs. 14 to 16 W.
T. 21 N., Rs. 14 to 16 W.
T. 22 N., R. 15 W., all of township.
T. 22 N., R. 16 W., all of township.
T. 23 N., R. 15W., all of township.
T. 23, N., R. 16 W., all of township.

Respectfully,

GEO. OTIS SMITH,
Director.

July 1, 1910.

Respectfully referred to the President with the recommendation that the same be approved.

R. A. BALLINGER,
Secretary.

Approved July 2, 1910, and referred to the Secretary of the Interior.

WM. H. TAFT,
President.

Referred to the Commissioner of the General Land Office for appropriate action.

FRANK PIERCE,
Acting Secretary.
DMC

404 Indorsed:—Pl. 24. R. B. Cook, Stenographer. Filed Jan. 21, 1919.

405 Department of the Interior,
General Land Office,

Washington, D. C. November 24, 1917.

I hereby certify that the annexed copy of telegram dated December 15, 1908, is a true and literal exemplification from the copy of said telegram on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

(Seal)

D. K. PARROTT,
Acting Assistant Commissioner
of the General Land Office.

DMG—3C

"A" Department of the Interior,
ECF General Land Office,
ECF
Washington, D. C. December 15, 1908.

PLTFF. EX. C.

Telegram (Copy).

Register and Receiver,
Natchitoches, Louisiana.

Public lands in townships fifteen to twenty-three north, inclusive, of ranges ten to sixteen west, inclusive, Louisiana Meridian, withdrawn this date by Secretary from all settlement, entry, and appropriation.

DENNETT,
Commissioner.

RPF.

Official Business, Government Rate.

Plaintiffs C. Filed Feb. 28, 1918. W. B. Lee, Clerk, U. S. Dist. Court, West. of La.

DMG-"FS"
406 Department of the Interior,
"B" General Land Office.

CRGO Washington, D. C., December 8, 1917.

I hereby certify that the annexed copy of office letter dated December 15, 1908, is a true and literal exemplification from the press copy on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

(Seal) D. K. PARROTT,
Acting Assistant Commissioner
of the General Land Office.

PLTFF EX. D 1172.

"A"
ECF
ECF

Department of the Interior,
General Land Office.
Washington, D. C., December 15, 1908.

Address only the Commissioner of the General Land Office.

Register and Receiver,
Natchitoches, Louisiana.
Sirs:

Confirming my telegram of December 15, 1908, you are advised of the withdrawal on that date by the secretary, from all settlement, entry, and appropriation of the public lands in townships 15 to 23 North, inclusive, of ranges 10 to 16 west, inclusive, Louisiana Meridian. Make proper notations upon your records.

No rights whatever can be obtained by any location or settlement made, or claim initiated after the withdrawal; and any applications, selections, or entries based thereupon must be rejected by you subject to appeal.

407 Applications, selections, entries, and proofs based upon selections, settlements, or rights initiated prior to the date of withdrawal may be received by you and allowed to proceed under the rules up to and

including the submission of final proofs. You must not, however, in such cases receive the purchase money or issue final certificates of entry, but must suspend the entries and proofs pending investigation as to the validity of the claims with regard to the character of the land and compliance with the law in other respects. You will place such suspended cases in a file in your office, and for the information of this office prepare and forward a schedule thereof with your monthly returns upon Form 4-115.

Very respectfully,

FRED DENNETT,
Commissioner.

RPF

Plaintiffs D. 1172. Filed Feb. 28, 1918.

408 Department of the Interior,
General Land Office,
Washington, D. C.

November 24, 1917.

I hereby certify that the annexed copy of letter dated July 10, 1910, is a true and literal exemplification from the copy of said letter on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

D. K. PARROTT,
Acting Assistant Commissioner of
the General Land Office.

Department of the Interior,
General Land Office.

Washington, July 16, 1910.

Address only the
Commissioner of the General Land Office.
Petroleum Reserve No. 4.

PLTFF EX. E—1172.

Register and Receiver,
Natchitoches, Louisiana,
Sirs:

You are advised that, by order of the President, dated July 2, 1910, that certain order of withdrawal, heretofore made, on December 15, 1908, insofar as the same includes any of the land hereinafter described, was ratified, confirmed and continued in full force and effect; and subject to all of the provisions, limitations, exceptions and conditions contained in the Act of Congress entitled "An Act to authorize the President of the United States to make withdrawals of public lands in certain cases," approved June 25, 1910, (Public-No. 303), the President withdrew from settlement, location, sale or entry, and reserved for classification and in aid of legislation affecting the use and disposal of petroleum lands

409

10-54239 "N"
R&R Natchitoches, La.

belonging to the United States, all of those certain lands of the United States set forth and particularly described in the accompanying list. The lands included in this list will be known as "Petroleum Reserve No. 4."

You will make the following notation opposite each tract described herein: "Petroleum Reserve N. 4 Ex. Order July 9, 1910", and give publicity to the order by furnishing copies to such newspapers in your district as may desire the same for publication without cost to the Government.

Very respectfully,

S. V. PROUDFIT,
Assistant Commissioner.

LEE
11-22 EEV.

10-54239 "N"

R&R, Natchitoches, La.

Petroleum Reserve No. 4.

particularly described as follows, to-wit:

Louisiana Principal Meridian, Louisiana.

T. 17 N., R. 10 W., all of township.
T. 18 N., R. 10 W., all of township.
T. 18 N., Rs. 14 to 16 W.
T. 19 N., Rs. 14 to 16 W.
T. 20 N., Rs. 14 to 16 W.
T. 21 N., Rs. 14 to 16 W.
T. 22 N., R. 15 W., all of township.
T. 23 N., R. 16 W., all of township.
T. 23 N., R. 15 W., all of township.
T. 23 N., R. 16 W., all of township.

11-22 EEV

No. 1172 Plaintiffs E.

410 PLAINTIFF F. 1, 2, 3, 4 and 5.

United States of America.

Department of the Interior.

Washington, D. C., November 16, 1917.

Pursuant to Section 882 of the Revised Statutes, I hereby certify that the annexed papers are true and exact copies of the originals as they appear of the records and files of this department.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the Department of the Interior to be affixed, the day and year first above written.

(Seal)

A. G. HOPKINS,
Assistant Secretary of the Interior.

DMG—KI

United States Geological Survey.

Department of the Interior.
Washington.

October 24, 1908.

Office of the Director.

Div'n Mails & Files
Received Oct. 26, 1908.
Department of the Interior.

Division of mails and files
Received Nov. 5, 1908,
to Gen'l Land Office,
Dept. of Interior.

Office of the Secretary.

Received Oct. 26, 1908.

The Honorable,
The Secretary of the Interior.
Sir:

I desire to bring to your attention an extreme case of the waste of mineral resources in the United States, in the hope that the legal officers of the Department may be able to suggest some method of conservation. The Chief Geologist of the Survey, C. W. Hayes, recently visited the Caddo oil field in Louisiana, in company with David T. Day, who is in charge of the Survey's investigation into the subject of oil production. The Chief Geologist's report is as follows:

This field is located about twenty-five miles northwest of Shreveport, Louisiana, in Caddo Parish. The field, as at present outlined by the preliminary well drilling,

411 is very narrow and extends for some ten miles in a northwest and southeast direction. There is every indication of further extension of the field to the north and southeast. In fact, no definite limitations have as yet been determined for the field, and it may be safely assumed from present conditions that it is likely to be of much greater extent.

This field has only lately come into prominence as a producer of petroleum, but for several years has given evidence of very great natural gas pressure, and several gas wells have been connected by pipe lines, first with Shreveport and later with Texarkana, by six and eight inch pipe lines respectively.

Some four years ago one of the natural gas wells in the field began to look badly around the casing due to poor work in packing the well above the gas-bearing sand. This leakage rapidly increased so that the well soon "blew out", that is, the pressure of the gas below the pipe out of the ground and tore away the surrounding earth, and the pipe, derrick, drilling apparatus, etc., all fell into the well and were submerged by water which blew out with the gas. The gas, under heavy pressure, continued blowing out from this well for about four years. It was gradually drowned out by salt water, and eventually the escape of gas ceased. This blowing out from indifferent work in packing the wells has been repeated in three other cases, and at the present time the gas is boiling up so rapidly around the casing of a fifth well that another "blow out" can be expected within a short time. In one well a crater about three hundred feet in diameter has been formed, which is usually about half filled with water or thin mud containing some petroleum. In the middle of this the gas boils up making a large mud volcano, and periodically the entire crater fills with oil and water overflowing into Caddo Lake.

It is absolutely impossible to measure the waste of gas from this well which has been in progress about two years; but it has been estimated by various persons familiar with gas wells at fifteen million cubic feet in twenty-four hours. Still greater waste of this valuable natural fuel is going on at a dry well about a mile due west of the well noted above. Here the gas is burning with a flame varying from seventy to one hundred feet in height, and the waste is evidently greater than in any other well in the field. In both of these wells enough of the casing remains in place to prevent the caving of the sides which
412 might in time check or entirely stop the flow of gas. The total waste in this only partially developed field has been estimated as at least 75,000,000 cubic feet per day or over 1700 tons. This is more than one twentieth of the total amount of natural gas usefully consumed in the entire United States.

No effort is being made to control these wells, and there is no record in the history of the United States of such wanton waste with absolutely no effort to check it.

The engineering problem of putting down a series of wells within two hundred feet of these burning wells is extremely simple, and it could be confidently expected that such wells, properly drilled, would draw off the gas and so reduce the pressure until the blown out wells could be controlled and safely filled in. No such attempt is being made because the oil men have the fanciful belief that after the gas has blown off the production of oil will be improved—an idea for which there is no justification, as this rapid escape of gas rather injures the oil chances of the field by permitting an influx of salt water as the gas pressure is removed. The apparent real reason for this profligate waste is that there is no immediate use for the gas beyond that supplied now for Shreveport and Texarkana, and the sensational exhi-

bition of this burning gas at night is a spectacle which will advertise the field to those passing through on trains.

An investigation of this oil field in cooperation with the Geological Survey of Louisiana is now in progress and additional information concerning it will be available in a short time.

It has been suggested that if any federal lands remain in this vicinity, there might be some basis for injunction to stop this needless waste. It is evident that engineering difficulties of considerable magnitude are involved, but the geologists of the Survey believe that the operators will be able to control the gas if a serious endeavor is made.

Very respectfully,

GEO. OTIS SMITH, Director.

413

Department of the Interior,

United States Geological Survey,

D

Washington.

5496

November 6, 1908.

DMGK

Office of the Director.

Division of mails and files.

Received Nov. 7, 1908.

To Assist. Gen'l.

Dept. of the Interior.

Secretary Receiver, Nov. 6, 1908.

Department of the Interior.

The Honorable,
The Secretary of the Interior.
Sir:

In connection with my letter of October 24, on the subject of the wanton waste of natural gas in the Caddo Oil fields in northwestern Louisiana:

I have the honor to advise you that a search made by the General Land Office shows that lands remaining in Federal ownership in the neighborhood of this oil field are as follows:

Township 14 North, Range 10 west:
N ½ NE¼, Sec. 14; N ½ NW¼, Sec. 34.

Township 15 North, Range 10 west:
Lots 6 and 10 of Sec. 8, area 8.20 acres.

Township 17 North, Range 10 West:
Sec. 26 and 35, in Lake Bistineau.

Township 18 North, Range 10 west:
S ½ SE ½, Sec. 26.

Township 19 North, Range 10 west:
W ½ NW ¼, Sec. 30.

Township 21 North, Range 10 west:
NW ¼ NE ¼, SW ¼ SE ¼, Sec. 25.

Township 19 North, Range 12 west:
All Sec. 28 except lot in SE ¼ SE ¼, 30.27 acres, old bed of Lake Bodcau.

Township 15 North, Range 14 West:
NE ¼ NW ¼, NW ¼ NE ¼, Sec. 12.

Township 16 North, Range 14 West:
NW ¼ NW ¼, Sec. 24.

Township 20 North, Range 14 West:
SW ¼ SW ¼, Sec. 8.

Township 15 North, Range 15 West.
NW ¼ Sec. 6.

414 Township 17 North, Range 15 west:
NW ¼, Sec. 5, E ½ NE ¼, Sec. 6.

Township 18 North, Range 15 west;
E ½ SE ¼, Sec. 14.

Township 19 North, Range 15 West:
NE ¼, Sec. 14, SE ¼ NE ¼, Sec. 26.

Township 15 North, Range 16 West:
SW ¼ NW ¼, Sec. 2; W ½ NE ¼ and SW¼, Sec. 18; SW¼, Sec. 19.

Township 16 north, Range 16 west:
W ½ NE ¼ and SW ¼, Sec. 19, NE ¼ SE¼; Sec. 24; W ½ Sec. 30; W ½ Sec. 31.

Township 17 North, Range 16 west:
S ½, Sec. 6; Lot 2 (34.39 acres) Sec. 30.

Township 18 North, Range 16 west:
SW ¼, Sec. 6; NW ¼, Sec. 7; NW ¼, E ½ SW ¼, SW¼ SW¼, Sec. 13; W ½ SW¼ and SE ¼ SW ¼. Sec. 28; SW¼, Sec. 30; E ½ NW¼, Sec. 36.

Township 19 North, Range 16 west:
SW ¼, Sec. 7; SW ¼ SE ¼ and W ½, Sec. 8; SW ¼, Sec. 30.

Township 20 North, Range 16 West:
NE ¼ SE ¼, Sec. 1; SW ¼ SW ¼, Sec. 3 (For S ½ SW ¼, Sec. 3, see "C", Aug. 24, 1905).

Among these lands that located in Township 20 North, Range 16 West, and comprising the NE ¼ SE ¼, Sec. 1, as well as SW ¼ SW ¼ Sec. 3, are clearly within the known productive area of this oil and gas field. The waste of natural gas referred to in my previous letter on this subject constitutes an evident drain upon the mineral resources of the public domain. If permitted to continue it will inevitably destroy the mineral value of this public land, and render it worthless in a comparatively short time.

If the Government, by reason of these holdings, can ask for an injunction against further drilling for oil or gas within the area of the Caddo field until effective measures are taken both to stop the present waste of gas and to insure wells now being drilled against similar "blowing out", I would recommend that this action be taken. Whether such an injunction is not possible, the determination of the conditions necessary for the protection of the Government and other property in this vicinity might well be entrusted to a commission to consist of a member of the Geological Survey, a member of the General Land Office and the State Geologist of Louisiana.

415

I have the honor to further recommend that all the lands described herein be withdrawn from entry pending the investigation now under way as to their value for oil and gas and also that all public lands in Texas within

a width of two sections from the Louisiana line opposite the tract between Townships 18 and 20 in Louisiana be similarly withdrawn from entry.

Very respectfully,

GEO. OTIS SMITH, Director.

"A" 1 Ex.

ECF Department of the Interior.
ECF General Land Office.

Washington, D. C., December 15, 1908.

Address only the
Commissioner of the General Land Office.

Register and Receiver,
Natchitoches, La.

Sirs:

Confirming my telegram of December 15, 1906, you are advised of the withdrawal on that date by the Secretary, from all settlement, entry, and appropriation of the public lands in townships 15 to 23 North, inclusive, of ranges 10 to 16 West, inclusive, Louisiana Meridian. Make proper notations upon your records.

No rights whatever can be obtained by any location or settlement made, or claim initiated after the withdrawal; and any application, selections, or entries based thereupon must be rejected by you subject to appeal.

Applications, selections, entries, and proofs based upon selections, settlements, or rights initiated prior
416 to the date of withdrawal may be received by you and allowed to proceed under the rules up to and including the submission of final proofs. You must not, however, in such cases receive the purchase money or issue final certificates of entry, but must sus-

pend the entries and proofs pending investigation as to the validity of the claims with regard to the character of the land and compliance with the law in other respects. You will place such suspended cases in a file in your office, and for the information of this office, prepare and forward a schedule thereof with your monthly returns upon Form 4-115.

Very respectfully,

FRED DENNETT, Commissioner.

RPF

"A" Department of the Interior,
ECF General Land Office.
ECF Washington, D. C.

Telegram.

Copy.

December 15, 1908.

Register and Receiver,
Natchitoches, Louisiana.

Public lands in townships fifteen to twenty-three north, inclusive, of ranges ten to sixteen west, inclusive, Louisiana Meridian, withdrawn this date by Secretary from all settlement, entry and appropriation.

DENNETT, Commissioner.

Rpf

Official business,
Government rate.

417 Department of the Interior,
United States Geological Survey,
Washington.

Secretary received May 19, 1909.
Department of the Interior.

La.

Office of the Director.

May 19, 1909.
2-41

The Honorable,
The Secretary of the Interior.
Sir:

Referring to letter of Mr. R. R. Emery of May 13, addressed to the President, regarding waste of natural gas in Louisiana, and Mr. Carr's memorandum, asking what action may be taken in this matter:

I have the honor to report that there are in the vicinity of this blowing well two tracts of public land—one, the NE¼ of the SE¼ Sec. 1—and the other the SW¼ of the SW¼ of Sec. 3, T. 20 N., R. 16 W.

It has been suggested that since this blowing well undoubtedly tends to waste and exhaust the supply of gas under the Government land, the Government might interfere by injunction, and in this connection the statement of the Court in Camfield V. United States, 167 U. S. 525, was cited.

While we do not undertake to say that Congress has the unlimited power to legislate against nuisances within a State which it would have within a Territory, we do not think the admission of a Territory as a State deprives it of the power of legislating for the protection of the public lands, though it may thereby involve the exercise of what is ordinarily known as the police power so long

as such power is directed solely to its own protection. A different rule would place the public domain of the United States completely at the mercy of State legislation.

The Honorable, The Secretary of the Interior.
P. 2—

While the lands in question are all within the State of Colorado, the Government has, with respect to its own lands, the rights of an ordinary proprietor, to maintain its possession and to prosecute trespassers. It may deal with such lands precisely as a private individual may deal with his farming property. It may sell or withhold the same for sale, it may grant them to preemtion or homestead settlement; but it would be recreant to its duties as trustee for the people of the United States to permit any individual or private corporation to monopolize them for private gain, and thereby practically drive intending settlers from the market.

418 These tracts of public land, as well as all public lands in adjoining regions, shown on accompanying map and embracing a total area of 6599.32 acres, were withdrawn by an order of Secretary Garfield on December 15, 1908, pending examination and classification.

I enclose copies of correspondence relative to this matter.

Very respectfully,

GEO. OTIS SMITH,
Director

No. 1172. Filed Feb. 28, 1918.

419 PLAINTIFF G.

Restoration of June 6, 1910.

Department of the Interior,
General Land Office.

Washington, D. C., November 16, 1917.

I hereby certify that the annexed copy of letter dated June 6, 1910, is a true and literal exemplification from the press copy of file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

(Seal) C. M. BRUCE,
Assistant Commissioner of the
General Land Office.

C. A. H.

Department of the Interior,
General Land Office.
Washington, D. C.

June 6, 1910.

Address only the
Commissioner of the General Land Office.

Restoration of lands included
in oil withdrawal.

Register and Receiver,
Natchitoches, Louisiana.

Sirs:

You are advised that by Departmental approval on June 4, 1910, of the recommendation of the U. S. Geologi-

cal Survey, the lands described herein, which were withdrawn from all forms of disposal under Departmental order of December 15, 1908, are restored to entry, the lands having been found after field investigation not to contain sufficient evidence of oil to warrent the continuation of the withdrawal.

You will stamp on your tract book "Restored" with date thereof. Such restored lands will then be open to location and disposal under the appropriate public land laws.

Very respectfully,

S. V. PROUDFIT,
Assistant Commissioner.

R&R, Natchitoches, La.

420 Oil Restorations.

Louisiana Principal Meridian, Louisiana.

T. 15 N., Rs. 10 to 16 W., inclusive.
T. 16 N., Rs. 10 to 16 W., inclusive.
T. 17 N., Rs. 11 to 16 W., inclusive.
T. 18 N., Rs. 11 to 13 W., inclusive.
T. 19 N., Rs. 10 to 13 W., inclusive.
T. 20 N., Rs. 10 to 13 W., inclusive.
T. 21 N., Rs. 10 to 13 W., inclusive.
T. 22 N., Rs. 10 to 14 W., inclusive.
T. 23 N., Rs. 10 to 14 W., inclusive.

LJM

Filed Feb. 28, 1918.

421 PLAINTIFF H.

4-207

DMG—"FS"

"B" Department of the Interior,

CRGO General Land Office,

Washington, D. C.

November 16, 1917.

I hereby certify that the annexed copy of letter dated June 2, 1910, is a true and literal exemplification from the original on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

(Seal)

C. M. BRUCE,
Assistant Commissioner of the
General Land Office.

44655
Received G. L. O. Jun 4, 1910.
DMG-18 Referred to CAH
Answered by June 6, 1910.

Department of the Interior,
United States Geological Survey,
Washington.

Office of the
Director.

Miscl. Files.
Answered June 6, 1909.

Received June 4, 1910.
G. L. O.

June 3, 1910.

The Honorable,
The Secretary of the Interior.
Sir:

From the results of field examinations I am of the opinion that there is not sufficient evidence of oil to warrant the continuation of the withdrawal with respect to the following lands in Louisiana, and I therefore recommend that they be restored:

422 Oil Restoration.

Louisiana Principal Meridian, Louisiana.

T. 15 N., Rs. 10 to 16 W., inclusive.
T. 16 N., Rs. 10 to 16 W., inclusive.
T. 17 N., Rs. 11 to 16 W., inclusive.

T. 18 N., Rs. 11 to 13 W., inclusive.
T. 19 N., Rs. 10 to 13 W., inclusive.
T. 20 N., Rs. 10 to 13 W., inclusive.
T. 21 N., Rs. 10 to 13 W., inclusive.
T. 22 N., Rs. 10 to 14 W., inclusive.
T. 23 N., Rs. 10 to 14 W., inclusive.

Special

The area involved in this restoration if 1,036,800 acres of which only a very small percentage is public land. The

original withdrawal of December 15, 1908, was however, made in blanket form and the restoration is therefore in the same terms.

Very respectfully,

GEO. OTIS SMITH, Director.

Approved June 4, 1910 ECF
and sent to General Land Office.

R. A. BALLINGER, Secretary.
DMC.

Filed Feb. 28, 1918.

423 PLAINTIFF I.

Letter June 29, 1910. Construction of Restoration Order.

4-207.

DMG—"FS"
"B"
CRGO

Department of the Interior,
General Land Office,
Washington, D. C.

November 16, 1917.

I hereby certify that the annexed copy of letter dated June 29, 1910, is a true and literal exemplification from the press copy on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

(Seal)

C. M. BRUCE,
Assistant Commissioner of the
General Land Office.

C. A. H.

Department of the Interior,
General Land Office,
Washington, D. C.

Address only the
Commissioner of the General Land Office.

Instructions relative to
restored lands.

June 29, 1910.

Register and Receiver,
Natchitoches, Louisiana.

Sirs:

I am in receipt of your letter of June 13, 1910, in which you refer to letter "N" of June 6, 1910, advising your of-

fice of the restoration of certain townships in your district included in oil withdrawal of December 15, 1908, and state that since said date many requests have been received that final certificates be now issued on final proofs suspended, and action be taken on rejected applications for lands in these townships, and you ask instructions.

In reply I have to state, that your office was advised by said letter "N" of June 6, 1910, that the lands embraced in the list accompanying said letter were "Restored" under Departmental order of June 4, 1910, and that the lands were subject to location and disposal un-

424 10-44655 "N"

der the appropriate public land laws. Accordingly you will now take appropriate action on all cases involving lands in these townships that were suspended or rejected on account of the oil withdrawal of December 16, 1908.

Very respectfully,

S. V. PROUDFIT,
Assistant Commissioner.

Board of Law Review.
By JOHN McPHAUL.
LJM

Filed Feb. 28, 1918.

425 PL. J.

Letter in re: Restoration.

4-207.

DMG—"FS"
"B"
CRGO

Department of the Interior,
General Land Office,
Washington, D. C.

November 16, 1917.

I hereby certify that the annexed copy of letter dated June 6, 1910, is a true and literal exemplification from the press copy on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

(Seal)

C. M. BRUCE,
Assistant Commissioner of the
General Land Office.

C. A. H.

Department of the Interior,
General Land Office.
Washington, D. C., June 6, 1910.

Address only the
Commissioner of the General Land Office.

Restoration of land included in oil withdrawal.

The Director,
U. S. Geological Survey.
Sir:

I enclose herewith copy of letter "N" of even date advising the local officers at Natchitoches, Louisiana, of the restoration to entry of certain townships in their district included in withdrawal of December 15, 1908.

Very respectfully,

S. V. PROUDFIT,
Assistant Commissioner.

Board of Law Review.
By JOHN McPHAUL.
LJM.

Filed Feb. 28, 1918.

426

PL. K.

4-207.

DMG—"FS"
"B"
CRGO

Department of the Interior,
General Land Office.

Washington, D. C., November 16, 1917.

I hereby certify that the annexed copy of letter is a true and literal exemplification from the original on file in this office.

In testimony whereof I hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

(Seal)

C. M. BRUCE,
Assistant Commissioner of
the General Land Office.

DMG—I 1.

Natchitoches 10-44655
"N"—C.A.H.
A. Z. N.

Department of the Interior,
United States Land Office.

Miscl. Files.
Answered June 29, 1910.

44655.
Rec'd G. L. O. June 17, 1910.
Answered Jun. 29, 1910.

Natchitoches, La., June 13th, 1910

Hon. Commissioner,
General Land Office,
Washington, D. C.

Sir:

Referring to your letter of June 6th, 1910, restoring certain lands included in oil withdrawal, we have the honor to state that publicity was given for the information of the parties in interest. Since then many applications have been made asking that final certificates issue on final proofs made on lands within the district withdrawn and which have by your said letter been restored, which we have declined to comply with. Many applica-

tions rejected during the period of withdrawal now ask that entries be allowed and placed of record since the restoration of the lands, all of which this office has declined to do as when the proofs were suspended and the entries rejected this office ceased to have jurisdiction over said tracts and can not take further action without special instructions from your office.

427 Are we correct?

Very respectfully,

J. ERNEST BRIEDA, Register.

Received Jun. 16, 1910. G. L. O.

No. 1172. Filed Feb. 28, 1918.

428 PLAINTIFF M.

4-270.

DMG—"FS"
"B"
CRGO

Department of the Interior,
General Land Office.

Washington, D. C., December 6, 1917.

I hereby certify that the annexed copy of departmental letter dated November 7, 1914, is a true and literal exemplification from the press copy on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

(Seal)

D. K. PARROTT,
Acting Assistant Commissioner of
the General Land Office.

DMG—1 B
Official copy
not to be taken from the
record.

Department of the Interior.
Washington.

November 7, 1914.

D-26417
Ex parte
John T. Bowman.

"N."
Homestead entry -03795
Baton Rouge, Louisiana.
Modified.

Appeal from the General Land Office.

Decision Promulgated
Nov. 23, 1914.

This is an appeal by John T. Bowman from the decision of the Commissioner of the General Land Office of December 27, 1913, reversing the action of the local officers and holding for cancellation his homestead entry 03795 for the E½ SE¼, Sec. 11, T. 21 N., R. 16 W., Baton Rouge, land district, Louisiana.

The entry was allowed June 10, 1907, and on
429 January 22, 1910, the entryman submitted commutation proof showing satisfactory compliance for the necessary period with the requirements of the homestead law in the matters of residence, cultivation and improvement, and on the same date, it seems, paid the purchase price for the land and the final proof fees. Final certificate, however, was withheld for the reason

that the land was within an area withdrawn by Departmental order of December 15, 1908, on account of oil and gas deposits therein, and by the President's proclamation of July 2, 1910, under the provisions of the act of June 25, 1910 (36 Stat., 847) it was included within Petroleum Reserve No. 4. By letter of June 17, 1913, the Director of the Geological Survey, in response to an inquiry addressed to him by the Commissioner of the General Land Office, reported that the tract in question is chiefly valuable for oil and gas.

On the basis of a report adverse to the entry submitted by a special agent of the General Land Office, June 3, 1910, the Commissioner, by letter of July 26, 1911, directed the institution of proceedings against the entry on the charges in substance that the land is chiefly valuable for its oil and gas, and that the date of final proof the claimant knew, or should have known, from certain conditions that it was so chiefly valuable. As a result of hearing ordered and had on these charges the local officers found that they had not been sustained and recommended that the protest be dismissed. On appeal the Commissioner, by decision here complained of, found and held that the "oil and gas character of the land was known prior to final proof." He accordingly reversed the action of the local officers, and for that reason held the entry for cancellation.

By the proviso to paragraph 2 of the Act of July 17, 1914, Public No. 128, 63d Congress, entitled,

"An Act to provide for agricultural entry of lands withdrawn, classified, or reported as containing phosphate, nitrate, potash, oil, gas or asphaltic minerals."

it is prescribed,

That nothing herein contained shall be held to deny or abridge the right to present and have prompt consideration of applications to locate, select, enter or purchase, under the land laws of the United States, lands which have been withdrawn or classified as phosphate, nitrate, potash, oil, gas or asphaltic mineral lands, with a view of disproving such classification and securing patent without reservation, nor shall persons who have located, selected, entered, or purchased lands subsequently withdrawn or classified as valuable for said mineral deposits, be debarred from the privilege of showing, at any time before final entry, purchase, or approval of selection or location, that the lands entered, selected, or located are in fact non-mineral in character.

And by section 3 of said act, it is provided,

That any person who has, in good faith, located, selected, entered, or purchased, or any person who shall hereafter locate, select, enter or purchase, under the non-mineral land laws of the United States, any lands which are subsequently withdrawn, classified, or reported as being valuable for phosphate, nitrate, potash, oil, gas or asphaltic minerals, may, upon application therefor, and making satisfactory proof of compliance with the laws under which such lands are claimed, receive a patent therefor, which patent shall contain a reservation to the United States of all deposits on account of which the lands were withdrawn, classified or reported as being valuable, together with the right to prospect for, mine, and remove the same.

As will be observed from the foregoing recitation of facts respecting this land, it was, subsequently to Bowman's entry both withdrawn and reported as oil and gas

bearing mineral land, and according to the provisions of said act of July 17, 1914, is subject to be patented only with a reservation to the United States of all deposits on account of which the land was withdrawn or classified unless the claimant should show that it is not valuable on account of such deposits. A careful examination of the record convinces the Department that the claimant has failed to show that the land is not valuable on account of deposits of oil or gas. This being true, it must be held that, irrespective of any other consideration, the claimant is entitled, in the absence of other objection, only to a patent which shall reserve to the United States all deposits of oil or gas which may underlie the land.

The decision of the Commissioner is, therefore, modified to accord with the views herein expressed.

(Signed) A. A. JONES,
First Assistant Secretary.

No. 1172. Filed Feb. 28, 1919.

431 PLAINTIFF N.

41-207.

DMG—"FS" Department of the Interior,
"B" General Land Office.

CRGO Washington, D. C., December 6, 1917.

I hereby certify that the annexed copy of office letter dated December 27, 1913, is a true and literal exemplification from the press copy on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

(Seal) D. K. PARROTT,
Acting Assistant Commissioner of
the General Land Office.

DMG—1 A
In Reply please refer to Baton Rouge 03795 "N" HHH
1 x
2x 1 x CFD

Department of the Interior,
General Land Office.

26417 Washington, December 27, 1913.

Address only the
Commissioner of the General Land Office.

United States,

vs.

John T. Bowman.

Involving homestead entry 03795.

Decision of R&R reversed, subject to appeal.

Register and Receiver,
Baton Rouge, Louisiana.

Sirs:

June 10, 1907, John T. Bowman made Natchitoches homestead entry No. 11130, later serial 01023, now Baton

Rouge 03795, for the fractional E½ SE¼, Sec.
432 11, T. 21 N., R. 16 W., containing 80.17 acres.

On December 15, 1908, the land was withdrawn from entry, by the Secretary, on account of oil and gas deposits therein, and said tract was subsequently included in Petroleum Reserve No. 4, under the act of June 25, 1910, by executive order of July 2, 1910. On January 22, 1910, the claimant submitted final commutation proof, which was suspended on account of the existing withdrawal, and final certificate of entry has not issued.

Under date of June 3, 1910, an adverse report on this entry was submitted by a special agent, and by letter "P", dated July 26, 1911, proceedings, under the circular of January 19, 1911 (39 L. D. 458), were directed, the charges being that said land is chiefly valuable for its oil and gas, and at the time final proof was submitted, the claimant knew, or should have known, from surrounding conditions, that such land was chiefly valuable for oil and gas. Notice of these charges was served on claimant by registered mail on October 7, 1911, and on October 9, 1911, he made answer, denying the charges. After several continuances, hearing began on January 12, 1912, before the clerk of Court at Shreveport.

On August 7, 1912, you rendered your joint decision, in favor of the entryman, and served notice by ordinary mail. Your letter of the same date forwarded the papers in the case. The record has been carefully reviewed here. According to the final proof, the claimant first established residence on the land in November, 1907, and had continuously resided thereon, being once visited by his family for about a month, in August or September, 1909. He cultivated about one acre of land, out of 80 cultivable acres, raising vegetables for his own use, and cleared about five acres. He also had a two-room house, a chicken

house, and had fenced the entire entry, the improvements being valued at $400 or $500.

At the hearing, the first witness for the protestant was D. C. Richardson, president of the Richardson Oil Company who described the gas and oil developments in the vicinity of the entry, from personal information
433 gained by exploring and drilling in the Caddo field in the last 5 years. He stated that in November, 1909, a good, producting gas well was brought in, in the SW¼ SW¼, Sec. 7, T. 21 N., R. 15 W., about 1½ miles to the east of the entry. In 1909 a well drilled by the Producers Oil Company, in the NE¼ SE¼, Sec. 12, southeast of the entry, yielded neither oil or gas. A well in the SE¼ NE¼, Sec. 11 finished in January, 1910, produced much gas and water, at a depth of 1056 feet, but no oil. A well drilled in or near the S½ SE¼, Sec. 2, in 1909, yielded a small amount of oil from 30 to 35 barrels a day. The Rogers well in Sec. 24, drilled in 1908 or 1909, proved a good producer of gas, at the rate of 10,000,000 feet a day.

The witness had drilled in January, 1910, within 1,000 or 1,200 feet of the entry and obtained gas with much salt water and but a smell of oil. In his drilling operations, he paid no attention to the topography, nor to geological conditions, except at depth, when he encountered a producing stratum or a cap rock formation. Unless the formation appears regularly, at depth, he would not expect a producing well.

The next witness, Sim. J. H. Hunt, has a homestead entry adjoining Bowman's (Baton Rouge 03790, N ½ SW ¼ and NW ¼ SE ¼, Sec. 12), and would, therefore, be in sympathy with Bowman's contentions. The nearest well to the entry, according to Hunt, was about 200 yards east, and though stated to be a dry well, was capped, to keep it from blowing out salt water. The wit-

ness also testified that at time of final proof, the nearest producing well was 3 or 4 miles distant, and, though the oil companies had leased all the land they could get there, and had even tried to lease his own entry, still he had never heard Bowman talk oil or gas, or that he had leased his entry, and there was no excitement over oil or gas there at that time.

The third witness, W. B. Pyron, was the Shreve-
434 port agent for the Gulf Refining Company of Louisiana, and had been familiar only with the oil developments, since November, 1909. Most of his testimony consists of a description of developments, subsequent to submission of final proof, together with his opinions of what his company might have done in January, 1910, as to the entered tract. He would pay no attention to the geology of the region, because he believed the oil deposits to exist in local pools, and not in well defined strata. He states also that in several instances a dry well would be found within 1,000 feet of a good producer; but, unless some attention is paid to the geology, as shown by the logs of the well, then the opposite proposition may be as true, i. e., that a producing well may be found within 1,000 feet of a dry hole.

Witness S. A. Guy, an independent operator in the Caddo field for seven years, testified that he first considered the land in the vicinity of the entry, as valuable for oil, in 1908, the drilling there being begun in the fall of 1908. (The land was first withdrawn from entry in December, 1908, as above stated). As early as 1906, he acquired a one-fourth interest in a tract of 2784 acres, including lands around the entry, at a valuation established in Secs. 19 and 30, in T. 21 N., R. 15 W. Both oil and gas were discovered within 3 miles of the entry in 1908, since which time drilling thereabouts has been going on continuously. An oil pipe line now serves to con-

vey the product of several small wells in Sec. 11. Though he would not drill the entered area himself, he would not sell that or any other land in the field at its surface value. Though not a geologist, he was of opinion that the oil was not concentrated in pools, but in strata, some of which are livelier than others. He was of opinion that the local developments at time of final proof were sufficient to put one on notice of the oil possibility of the entry.

The claimant himself was the only witness in support of the entry. He admitted that the land entered is chiefly valuable for oil and gas, but contended that it was not so known at the time of submiting final proof. He denied there was any oil excitement there in January, 1910, though there was some later in the year. He did admit that one S. B. Harrell had offered to defray the expenses
435 of his commutation proof, provided he (the entryman) would lease the land to the Producers Oil Company, though he refused offer. At time of final proof this company had leases of adjacent lands. The nearest oil well at that time was about one mile to the north, a 20 barrel well claimed by Mr. Guy, and of the nine wells within two miles, three had produced. One well was being drilled 180 feet from the entry, and another 300 feet away, by Richardson. The claimant stated that his land was then thought possibly valuable for gas, and he was of that opinion too, but no one regarded it as valuable for oil.

Public lands containing deposits of natural gas are subject to the provisions of the United States mining laws, as are lands containing deposits of petroleum. In Bulletin No. 429, of the United States Geological Survey, 1910, a list of the wells in Caddo field up to February 15, 1909, may be found, beginning at page 139, and W. B. Pyron, in his testimony in the case of Thomas J. Stockley (Baton

Rouge 03472), stated that the data in said bulletin is fairly accurate, especially as to dates. (See p. 7 of the transcript). Among others, the following wells near this entry may be mentioned; the Pardue No. 1, in the SW¼ NW¼, Sec. 1, T. 21 N., R. 16 W., completed December 6, 1908, a 2,500.000 feet gasser, by the Caddo Gas and Oil Company; Producers No. 2, in the NE¼ SE¼, Sec. 2, T. 21 N., R. 16 W., still drilling in February, 1909; Rogers No. 1, in Sec. 24 T. 21 N., R. 16 W., estimated at 40,000,000 cubic feet gas in August, 1908, being drilled deeper in December, 1908; Rogers No. 2, same Sec. 24, drilling July-Sept. 6, 1908, 40,000,000 cubic feet gas at 1035 feet; Rogers No. 3 in S. W. ¼, Sec. 24, drilling begun in December, 1908, etc.

It is not necessary that there should be actual drilling on the entry to establish its gas or oil character. The situation with relation to petroleum and gas deposits in adjacent lands, and the existence of producing wells in the immediate vicinity, must be considered. The presence of numerous oil and gas wells close at hand are conclusive against a plea of ignorance, as these matters are calculated to put a person of ordinary prudence upon inquiry, and the defendant in this case was well aware of developments in the vicinity of his entry. Bulletin No. 429 states that there are two distinct ways in
436 which oil and gas occur in Louisiana, that in Caddo Parish being denominated as the "stratum" mode, in normally stratified rocks belonging to well-known geologic horizons. The claimant cannot be indulged in any indifference to the developments around him, and the common topics of conversation in his neighborhood. It is unnecessary to impute knowledge of the oil and gas developments to the entryman, who, by his residence on the land was actually familiar with such developments. One claiming exemption from the conse-

quences of knowledge cannot be heard to say that he did not know what he would have learned if he had intelligently observed the conditions by which he was environed. Lafayette v. Larason, 73 Ind., 374; Cleveland Woolen Mills vs. Sibert, 81 Ala. 145. The Government had received sufficient information over a year prior to the submission of final proof, to warrant withdrawal of the land for its oil and gas contents.

Accordingly, upon the entire evidence in the case, it is held that the oil and gas character of the land was known prior to final proof. Your decision is, therefore, reversed, and the claimant will be allowed 30 days from notice hereof in which to file appeal to the Secretary of the Interior. You will make service in accordance with the rules, and in due time report with your evidence of service.

Very respectfully,

CLAY TALLMAN, Commissioner.

W. B. PRYOR.
11/13/13 McC.
03795-9-

Filed Feb. 28, 1918.

437 PLAINTIFF O.

DMG—"FS" 4-207.

"B" Department of the Interior,
CRGO General Land Office.

Washington, D. C., December 6, 1917.

I hereby certify that the annexed copy of letter dated December 22, 1913, is a true and literal exemplification from the press copy on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

(Seal)

D. K. PARROTT,
Acting Assistant Commissioner
of the General Land Office.

DMG—1 D
In reply please refer to Baton Rouge 03775 "N" HHH.
1 x
1 x
1 x CFD
26219
1 x William J. Alberty.

Department of the Interior,
General Land Office.

Washington, December 22, 1913.

Address only the
Commissioner of the General Land Office.

United States,
vs.
William J. Alberty,
Involving homestead entry 03775.

Decision of Register and Receiver affirmed, subject to appeal.

Register and Receiver,
Baton Rouge, La.
Sirs:

March 19, 1907, William J. Alberty made Natchitoches homestead entry No. 11096, later serial 0997, now Baton

Rouge 03775, for fractional Sec. 20 T. 20 N., R.
438 16 W., the area being given as 37.87 acres. The official plat, approved July 24, 1846, gives the area as 37.83 acres, the remainder of the section (which is cut on the west by the Texas state line) being included in Ferry Lake, sometimes called Caddo Lake. Final commutation proof was submitted June 8, 1909, but final certificate of entry did not issue on account of the fact that said land was withdrawn from entry, by the Secretary on December 15, 1908. The land was later included in Petroleum Reserve No. 4, by executive order of July 2, 1910, under the act of July 25, 1910.

Based upon an adverse report submitted by a special agent on February 6, 1912, proceedings under the circular of January 19, 1911 (39 L. D. 458) were directed by letter "P", dated February 20, 1912, the charges being that the land is mineral in character, chiefly valuable for its oil and gas deposits, and that the claimant knew, or should have known, from surrounding conditions, that the land was so valuable at the time of submitting final proof.

Notice of the charges issued, and on May 16, 1912, answer was filed, denying the allegations. Hearing was ordered, and, after several continuances, the taking of testimony began on December 28, 1912, before the clerk of Court at Shreveport. Thereafter, on February 13, 1913, you rendered your joint decision recommending cancellation of the entry. On March 14, 1913, an appeal was filed, on behalf of the entryman. Your letter of April 7, 1913, forwarded the papers in the case.

On April 4, 1912, Edmund Burke, as attorney for Herbert Rives, et al., wrote this office protesting against issuance of patent to Alberty, because he had clients claiming said land in Sec. 20, under a patent obtained from the State of Louisiana as swamp land, accrued to the state under a state swamp land grant and subsequent con-

firmatory statutes. The records of this office show no swamp land grant to the State of Louisiana, of this Sec. 20, and as the letter does not appear to have been intended as a formal protest, for the purpose of securing
439 a hearing, need not now be further considered.

The record has been carefully reviewed here. As shown by the final proof, the claimant established residence on the land between March, 1907, and June 1, 1907; with his wife and two children he has continuously resided thereon; about 7 acres were under cultivation; and the improvements, valued at about $200 to $250, consisted of a residence and one out house. The answer to the charges alleged that, at date of entry, the nearest oil well was 7 miles from the land; that the nearest gas well at time of entry was six miles away on the r. 1. Gilbert tract; that here was no oil well nearer than 7 miles at time of final proof; that there was no gas wells within 6 miles in June, 1909; that the first well to be put down west of James Bayou was not earlier than the summer of 1909, and was the Styles well; that the nearest producing oil or gas well was two miles away at date of 1910; that a well about 1¼ miles distant, drilled in the summer of 1911, by the Producers Oil Company, yielded a few barrels of oil but was abandoned; and that the claimant, whose occupation was that of fishing, and hunting ducks and geese on Ferry Lake and Jeems Bayou, for the Shreveport market, had known the land for a number of years, through his occupation and camping on the shores of the lake.

At the hearing, on December 28, 1912, the first witness for the Government was W. B. Pyron, whose familiarity with the Caddo oil field began in November, 1909. He stated that his company (the Gulf Refining Company of Louisiana) had leased the bed of the lake, over 8,000 acres, in November, 1910, at a cash bonus of $30,000, but that

the drilling operations were being prosecuted on the east side of the lake. He was of opinion that, as one goes west from Sec. 10, the wells becoming smaller, the oil and gas bearing formations thins out, and he did not think the oil and gas prospects in Sec. 20 to be encouraging.

Witness L. B. Webster, another employee of
440 the Gulf Refining Company of Louisiana, testified that he had been familiar with the Caddo field for 6 years, and agreed with Pyron's testimony. Because of two wells drilled on the Castleberry lease, about ½ mile west, in Texas, he believed this tract to be condemned territory, because the formation "pinched out", i. e., the formation is there, but not enough to produce. This stratum two miles north would be 18 to 20 feet thick, but only two feet of the oil sand under Sec. 20, decreasing thickness toward the south. This fact he believed was demonstrated by the logs of the wells, south from the Burr No. 1 well.

At this point the Government continued its case to December 30, 1912, and the defendant introduced his evidence. The first witness was S. N. Kerley, clerk of the District Court, a resident of Caddo Parish for 60 years. He was for 20 years secretary of the Caddo Levee Board, which from its lands in this field, had already received over half a million dollars in royalties and bonus money. He was also an original stockholder and member of the Jeems Bayou Hunting and Fishing Club, made up of Shreveport men, and whose properties lie in Secs. 9 and 10, across the lake from the entry. The club house, in Sec. 10, was built 20 years ago, when the land was obtained at a low price. The witness did not know how many wells there had been drilled on the club's property, as his son was the secretary, but the royalty for the preceding month amounted to $1100 or $1200. The first well there, however, was drilled 2 or 2½ years prior to the

hearing, on the shore of the lake in front of the club house, i. e., in Sec. 10, during 1910. He had been at the entryman's home but never had heard it discussed that land west of the lake was considerable valuable for oil or gas, in June, 1909.

H. L. Hailperin, for the claimant, was a resident of Caddo for several years and a realty operator. He stated that the wells on the club land were drilled after
441 final proof. The oil sand in Sec. 10 is thick, but thins out as one goes west. No wells near the entry have proved successful, except on the Burr lease, to the northwest 2½ or 3 miles, near Sec. 5, across the Texas line.

Henry Enders had lived in Caddo all his life, and corroborated the previous testimony that the wells on the club land were drilled after final proof was made. He was not an oil land expert but knew that the high values of the land thereabouts was still maintained. He had known of the claimant's hunting, fishing and camping along the lake 10 years before.

George M. Vaughn testified that the land involved is not swamp land, but average hill land. He lived east of the lake, near the club house; but few people lived near the lake on the west side. He knew of no oil talk over there in 1907, and had never heard the claimant express his opinion of the possibilities of the entry, unless to express his hopes.

The claimant himself testified that he had lived in Caddo Parish since 1892. At the time entry was made in 1907, the nearest well was five miles distant, at Oil City (northeast of Sec. 20), and there was no talk of oil or gas in his neighborhood. He did not "think" there was any oil or gas discussion there at time of final proof, and the nearest well was at the Stiles place, 6 or 7 miles away. He had had but about 3 weeks schooling in his

life, and was not familiar with legal documents. Though he was aware of the provision for submitting final proof in 5 years from date of entry. He commuted the entry "to get through with the land business."

The next day after he obtained his final receipt from the land office, he was visited by John Champion, an agent of the Producers Oil Company, and thereafter, on April 1, 1910, executed a lease to said oil company. By the terms of the lease, he received a bonus of $1900, and was to have a royalty of one-eighth of the production, the leasing price being $50 an acre. This lease expired in a year and was not renewed, but in the same year (1911)
442 he made another agreement with an agent of a supposed oil company, Gaumme Oil Company by name, by which he was to receive $14,000 cash bonus. When three notes came due, and were unpaid, he obtained a release from the transaction, keeping the land.

The claimant explained that when he made the first lease (a certified copy being in evidence), he was of opinion that he had received the final certificate of entry, and was told by Charles J. Green, Jr., son of the former receiver at Natchitoches land office, that he held the final receipt, and he was led to believe he could sell, transfer or do with the land any way and make a good title. He stated that after submitting final proof, he discovered his land had some value for oil or gas "pretty soon". When asked "You were trying to work the land for all there was in it?" he replied: "I guess so, looks sort of that way."

On the advice of this same Green, a mining location was made of the entered land, after final proof, among the locators being Green, and the claimant's father-in-law, R. J. Taylor. (Green made a homestead entry, Baton Rouge 03855, on June 20, 1908, for the W½ SW¼ and fraction NW¼ Sec. 20, T. 20 N., R. 16 W., and submitted

final proof December 27, 1909,—not on September 20, 1909, as stated in a letter of Mary E. Glenn in the case of Garrett W. Ballard, Jr., Baton Rouge 03837. Patent issued on Green's entry, bordering on the southeast side of the lake, on October 2, 1911). The mining location appears to have been abandoned, the notice being posted largely to keep other locators away.

For the Government, S. A. Guy, an independent oil operator, described certain transactions he had with the claimant before final proof. He stated that he then thought this land would come in, believing any land along the lake was a good risk, and figured that the
443 oil people would go that way, as practically the whole country was leased for oil and gas. On this chance, he had loaned the claimant $100 to make the final proof, with no other security than the latter's oral promise to convey to him half the land afterwards. But, as above set forth, the entryman obtained a $1900 bonus on his lease, repaid Guy, with interest and then refused to convey to him half the land or give him half the proceeds on the lease. Thereupon, Guy told him he would make trouble for him.

In rebuttal, S. L. Herold, a member of the law firm of Thigpen and Herold, attorneys for some of the big oil companies in Caddo field, testified that the Burr well, begun about December, 1909, was completed in March, 1910. This well was begun after the Stiles No. 4 came in, in November, 1909, the latter being the first well to attract attention west of the lake. Henry Enders, recalled, stated that because he had the entryman appointed game warden, a salaried position, he promised Guy to see that Alberty repaid the loan. The claimant then stated that he had not agreed to give Guy half the land, but that he would give Guy a chance to lease it, in case the land should come into the oil field. Their agreement was not put

into writing for fear of prejudicing the claimant's right to a patent. "He gave me the money, when I said it was a long ways from the field, but if it ever come in I would give him first chance on the place, and if it did not, I would pay him back."

The J. C. Trees Oil Company No. 1, in NW¼, Sec. 27, T. 21 N., R. 16 W., on the W. P. Stiles tract (west of the bayou) is believed to be the well referred to in the testimony. On page 149 of Bulletin 429, of the U. S. Geological Survey, a description of this well is found, up to February, 1909. A number of wells had been drilled east of the bayou prior to February, 1909, according to the list of wells in said Bulletin, beginning at page 139, particularly by the Producers Oil Company and
444 the Caddo Gas and Oil Company.

While the record does not show the claimant to have been remiss, in his observance of the homestead requirements as to residence and cultivation, it is believed, from the entire record, that the oil and gas character of the land along the lake and bayou, including Sec. 20, was generally known in June, 1909. Drilling in that vicinity began soon after final proof was made, development of necessity predicated upon the results of earlier investigations. The land was withdrawn for its oil and gas contents a number of months prior to June, 1909, and subsequent investigations by the Government, as to the oil and gas possibilities there, have not resulted in restoration of said land to entry.

It is, therefore, held that the land in Sec. 20 was known to be valuable for oil and gas prior to submission of final proof, and your decision is affirmed. As yet, Congress has not enacted any provision for surface patents, on oil and gas land, in any states except Utah and Idaho, and the entry, therefore, must be held for cancellation, subject to the claimant's right of appeal to the Secretary.

In due time report hereon with your evidence of service.

Very respectfully,

CLAY TALLMAN, Commissioner.

WB. PYRON.
11/19/13 McC.

Filed Feb. 28, 1918.

445 PLAINTIFF P.

DMG—"FS" 4-207.

"B" Department of the Interior,
CRGO General Land Office.

Washington, D. C., December 6, 1917.

I hereby certify that the annexed copy of departmental letter dated November 7, 1914, is a true and literal exemplification from the press copy on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington, on the day and year above written.

(Seal)

D. K. PARROTT,
Acting Assistant Commissioner of
the General Land Office.

DMG—1 C
Official Copy
Not to be Taken from
the Record.

Department of the Interior.

Washington, November 7, 1914.

D-26219
Ex parte
William J. Alberty. ?

"N."

H. E.-03775. Baton Rouge, Louisiana.
Modified.

Decision promulgated Nov. 23, 1914.

Appeal from the General Land Office.

The Department has considered the appeal of William J. Alberty from the decision of the Commissioner of the General Land Office of December 22, 1913, holding for cancellation his homestead entry 03775, for fractional section 20, T. 20 N., R. 16 W., Baton Rouge, land district, Louisiana.

The facts in this case are in all essential particulars similar to those disclosed in the case of ex parte John T. Bowman, this day decided by the Department,
446 and for the reasons therein stated, the entry will be held intact, provided the entryman shall elect to take patent therefor, which shall reserve to the United States all deposits of oil or gas that may underlie the land, pursuant to the provisions of the act of July 17, 1914, Public No. 128, 63d Congress. Otherwise, the entry will be cancelled.

The decision appealed from is accordingly so modified.

Signed A. A. JONES,
First Assistant Secretary.

447 PL. R.

4-207.

DMG-"FS".

"B" Department of the Interior,
CRGO General Land Office,
Washington, D. C.

January 16, 1918.

I hereby certify that the annexed extract copy of Louisiana tract book, so far as it shows section 5, T. 20 N., R. 16 W., Louisiana Meridian, is a true and literal exemplification from the tract book on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

(Seal) D. K. PARROTT,
Acting Assistant Commissioner of
the General Land Office.

No. 1172. Filed Feb. 28, 1918, W. B. Lee. Clerk, U. S. Dist. Court, Western District of Louisiana.

4-600

447

Township No. 20 N., Range No. 16 W., District of Natchitoches, La.

(Offered at Sale on the 27th Jany., 1840).

Tp. withdrawn from all disposal, by Secy. Dec 15, 1908, See "A" to R. & R. Natch: Dec. 15, 1908—Petroleum Re-

serve No. 4, Ex. Order July 2, 1910—Suppl. Plats (Sheets 1 and 2) of part of Tp. approved March 28, 1917, received in local office, Baton Rouge, April 14, 1917—745008. Letter "N" July 16, 1910—54239.

Description of Tract.

Part of Section—Section—Township—Range—Contents, Acres, 100ths—Rate per acre, Dollars, Cents—Purchase money, Dollars, Cents—Name of the Purchaser—Date of Sale—No. of receipt and certificate of purchase—To Whom Patented.

NE fr; 5; 20; 16; 451.47;

Cancelled; 20; 16; 211.47; 1.25; 264.34; John Green Rives, June 1st, 1840; 2069; 2069; Purchase money ordered to be refunded by Secy. Interior.

N. W. fr. qr. of N. E. fr. qr. 39; See note attached to approved list.

N ½ NW ¼ N ½ NE ¼; 5; 20; 16; 144.00; Selected for State under act March 2, 1849. Approved by Secty. of the Interior Aug. 1/54—See List "Supplement".

S. E. fr. qr. ½ 5247.

Lot No. 1 45.39; Frl. S. W ¼ N. E. ¼ and Frl. S. E. ¼; 5; 20; 16; See Sec. 8, H. E. 10817-03472 cancelled.

N. E. fr. qr. of N. W. fr. qr. 38.

Lot No. 2—5503.

N. W. fr. qr. of N. W. fr. qr. 40.

S. frl. of E ½—20.96.

S. E. fr. qr. 55.00.

S. W. qr. of N. W. fr. qr. 40.

S. W. qr. 160. Cancelled. 5; 20; 16; 80.00; 1.25; 100.00; John Green Rives; June 1st, 1840; 2073; 2073; Purchase money ordered to be refunded by Secy. of Interior. See letter to R. & R. 20 January, 1851.

Lot 3—14.12.
Lot 4—14.10.
Lot 5—29.87.

448 PL. T.

Western Union Telegram.

Received at 8s K K 37 Paid Gvt.

To Washington, D. C. 15
Register and Receiver,
City.

Public lands in township fifteen to twenty-three north inclusive of Ranges ten to sixteen west inclusive Louisiana Meridian withdrawn this date by Secretary from all settlement and appropriation.

DENNETT, Commissioner.

Baton Rouge, La., Jan. 8th, 1918. 11 50 AM.

We hereby certify that the above is a true and correct copy of telegram on file in the United States Land Office at Baton Rouge, La.

E. D. GIANELLONI, Register,
WM. W. VENTRESS, Receiver.

PLTFF EX. 8.

Department of the Interior,
General Land Office.

Washington, D. C., December 15th, 1908.

Address only the Commissioner
of the General Land
Office.

Register and Receiver,
Natchitoches, Louisiana.

Sirs:

Confirming my telegram of December 15, 1908, you are advised of the withdrawal on that date by the Secretary, from all settlement, entry, and appropriation of the public lands in townships 15 to 23 North, inclusive, of range 10 to 16 west, inclusive, Louisiana Meridian. Make proper notations upon your records.

No rights whatever can be obtained by any location or settlement made, or claim initiated after the withdrawal; and any applications, selections, or entries based thereupon must be rejected by you subject to appeal

Applications, selections, entries, and proofs based upon selections, settlements, or rights initiated prior to the date of withdrawal may be received by you and allowed to proceed under the rule up to and including the
449 submission of final proofs. You must not, however, in such cases receive the purchase money or issue final certificates of entry, but must suspend the entries and proofs pending investigation as to the validity of the claims with regard to the character of the land and compliance with the law in other respects. You will place such suspended cases in a file in your office, and

for the information of this office prepare and forward a schedule thereof with your monthly returns upon Form 4-115.

Very respectfully,

FRED DENNETT, Commissioner.

Baton Rouge, La., Jan. 8, 1918.

The above and foregoing is a true and correct copy of the Commissioner's letter on file in the United States Land Office, at Baton Rouge, La.

Baton Rouge, Jan. 8, 1918.

E. D. GIANELLONI, Register.
WM. W. VENTRESS, Receiver.

Filed Feb. 28, 1918.

450 75931
B 4-207.

R Department of the Interior,
General Land Office,
Washington.

Jan. 31, 1918.

I hereby certify that the annexed copy of patent is a true and literal exemplification from the record which is in my custody in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington, on the day and year above written.

(Seal) L. T. C. LAMAR,
Recorder of the General
Land Office.

Df No. 1.

(DEFENDANT'S EX. NO. 1—PATENT TO STEPHEN D. PITTS).

332, The United States of America.

Certificate No. 16,563.

To all to whom these presents shall come, Greeting:

Whereas, Stephen D. Pitts, of Caddo Parish, Louisiana, has deposited in the General Land Office of the United States, a Certificate of the Register of the Land Office at Natchitoches, whereby it appears that full payment has been made by the said Stephen D. Pitts according to the provisions of the Act of Congress of the 24th of April, 1820, entitled "An Act making further provision for the sale of the public land", for the south west fractional quarter of section ten, in Township Twenty, of Range Sixteen, West, in the District of Lands Subject to Sale at Natchitoches, Louisiana, containing Twenty-three acres, according to the official plat of the Survey of the said lands, returned to the General Land Office
451 by the Surveyor General, which said tract has been purchased by the said Stephen D. Pitts.

Now know ye, that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such cases made and provided, have given and granted, and by these presents do give and grant, unto the said Stephen D. Pitts and to his heirs the said tract above described: to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said Stephen D. Pitts and to his heirs and assigns forever.

In testimony whereof, I, James Buchanan, President of the United States of America, have caused these let-

lers to be made patent, and the seal of the General Land Office to be hereunto affixed.
759531

Given under my hand, at the city of Washington, the first day of October in the year of our Lord one thousand eight hundred and sixty and of the Indepedence of the United States the eighty-fifth.

(Seal) By the President: JAMES BUCHANAN.
By J. A. B. LEONARD, Secretary.
J. N. GRANGER, Recorder of the General Land Office.

Indorsed:—Deft (1). R. B. Cook, Stenographer. Filed Jan. 21, 1919.

452 Note:—Defendant's Exhibit No. 2—Plat of Warren Survey, of T. 20 N., R. 16 W., attached to Field Notes, and appearing in transcript at Page 452, omitted from the printed record, and filed in the original pursuant to stipulation of Counsel copied at page 1 hereof.

453 DEFENDANT'S EXHIBIT NO. 5.

This is a certified copy of deed from Sallie Pitts Austin and heirs of Stephen D. Pitts to S. N. Kerley, dated May 8th, 1899, conveying the southwest quarter of section ten (SW¼ Sec. 10) Township Twenty (20) Range Sixteeen (16) and Northwest quarter of Section Twenty Township Twenty, Range Fifteen (NW¼ Sec. 20 T. 20 R. 15) all in Caddo Parish, Louisiana—all other matters contained in said deed being omitted from this transcript in accordance with stipulation of counsel filed herein.

DEFENDANT'S EXHIBIT NO. 6.

This is a certified copy of deed from R. D. Pitts to S. N. Kerley and Jeems Bayou Fishing and Hunting Club, dated March 3rd, 1905, conveying the Southwest quarter of Section Ten, Township Twenty, Range Sixteen, and the Northwest quarter of Section Twenty Township Twenty Range Fifteen, situated in the Parish of Caddo, State of Louisiana—the other matters contained in said deed being omitted from this transcript in accordance with stipulation of counsel filed herein.

454 DEFENDANT'S EXHIBIT NO. 12.

This is an Act of ratification of Mrs. Lucie Pitts Joslyn, wife of B. F. Joslyn, of New York County, New York, executed on December 21, 1908, to S. N. Kerley and Jeems Bayou Fishing and Hunting Club, ratifying and confirming deed or act of ratification executed on December 12, 1908, by Howard C. Stingfellow, holding her Power of Attorney, before Thomas C. Barret, Notary Public in and for Caddo Parish, Louisiana, in her name, as her agent, of a certain sale made on the 8th day of May, 1899, by Mrs. Sallie Pitts Austin to S. N. Kerley, of the Southwest quarter of Section Ten, Township Twenty, Range Sixteen and the Northwest quarter of Section Twenty Township Twenty Range Fifteen, situated in Caddo Parish, Louisiana, relinquishing in favor of said S. N. Kerley and the Jeems Bayou Fishing and Hunting Club, all of her, the said Mrs. Lucie Pitts Joslyn's right, title and interest in the said land—all other matters in said act of ratification contained being omitted from this transcript in accordance with stipulation of counsel filed herein.

DEFENDANT'S EXHIBIT NO. 13.

This is a certified copy of deed from S. N. Kerley to Jeems Bayou Fishing and Hunting Club, dated April 2, 1910, conveying the Southwest Quarter of Section Ten, Township Twenty, Range Sixteen, and the Northwest Quarter of Section 20, Township Twenty, North, Range Fifteen West, situated in Caddo Parish, Louisiana, together with all buildings and improvements thereon, being the same property bought by said vendor from Mrs. Sallie P. Austin on May 8, 1899, as per deed recorded in Conveyance Book 23, page 25, of the records of Caddo Parish, Louisiana—all other matters contained in said deed being omitted as per agreement of counsel filed
455 herein.

DEFENDANT'S EXHIBIT NO. 14.

This is a copy of deed from A. C. Pitts to T. H. and A. L. Pitts, dated December 11, 1911, conveying "All my rights, title and interest in and to a suit now pending A. C. Pitts et als vs. Jeems Bayou Hunting & Fishing Club, now in the Supreme Court pending said judgment being adverse to said Pitts but in case the Supreme Court holds favorable to the said Pitts then all lands recovered by said suit stands transferred as above", offered in evidence by defendants—all other matters contained in said deed being omitted from this transcript in accordance with agreement of counsel filed herein.

456 DFT. EX. 15.

State of Louisiana,
Parish of Caddo:

Before me, Sidney L. Herold, a Notary Public in and for the State and parish aforesaid, on this day came and appeared M. L. Scovell, Pres. acting herein for the Jeems Bayou Fishing and Hunting Club, a corporation under the laws of the State of Louisiana, by virtue of authority conferred upon him by resolution of the Board of Directors of the said Club of date April 10th, 1912, a certified copy of which is hereby annexed and made part hereof;

And also, came and appeared Albert L. Pitts, a resident of Caddo Parish, Louisiana, and Thomas H. Pitts, a resident of Caddo Parish, Louisiana.

All of said parties declaring to me, Notary that,

Whereas, there was in October, 1910, instituted a suit in the First Judicial District Court, Caddo Parish, La., being No. 13,999 in the docket of said Court, wherein Albert L. Pitts, Thomas H. Pitts and Amory Pitts, were plaintiff, and the Jeems Bayou Fishing & Hunting Club, defendant, the said plaintiffs bringing petitory action to recover an undivided one-fourth interest in and to the Southwest quarter of Section Ten (10) Township Twenty (20) North Range Sixteen West, Caddo Parish, La., which said property they claim as heirs of their father, Robert L. Pitts, a deceased, and

Whereas, the said suit is still pending, being at present on appeal to the Honorable Supreme Court of Louisiana, from a judgment rendered in favor of defendant in the District Court and

Whereas, subsequently to the institution of the suit, Amory C. Pitts sold his interest in the property to Albert L. Pitts, and Thomas H. Pitts, and

Whereas, all parties hereto have agreed to settle and compromise all differences existing between them on account of the claim aforesaid.

They have therefore, entered, into the following agreement, settlement, transaction and compromise
457 which settles in full the different existing between them as to the title of the southwest quarter of Section 10, Township 20 North, Range Sixteen West, as follows, to-wit:

In full satisfaction release, and compromise of all interest in and to the balance of the said property the said Albert L. Pitts and Thomas H. Pitts, hereby take in full ownership and free of all claims the North fifteen acres of the Northeast quarter of the southwest quarter of section ten (10) Township Twenty (20) North Range Sixteen (16) West, same being more particularly described as follows, to-wit:

Beginning at the center of Section Ten, run thence West along the quarter Section line twenty chains to a point thence south 7.50 chains, thence east parallel with the first line twenty chains to a point on the north and south quarter section line; thence north 7.50 chains to the place of beginning.

And in consideration thereof, the said Albert L. Pitts and Thomas H. Pitts hereby release any and all claims on the balance of the said quarter Section the said Jeems Bayou Fishing and Hunting Club being recognized by

them as the full and absolute owner of the said quarter section as established by survey of H. E. Barnes and L. B. Crawford adopted by the Court in the case of Jeems Bayou Hunting & Fishing Club vs. Board of Commissioners of the Caddo Levee Board, except the fifteen acres above described.

Thus done and passed at my office in the Parish of Caddo, in the presence of C. Kellar and competent witnesses and by me, Notary, on this the 10th day of April, 1912.

JEEMS BAYOU HUNTING & FISHING CLUB,
By M. L. SCOVELL, Pres.
A. L. PITTS,
T. H. PITTS,

Attest:
C. KELLAR,
A. NORTON.
S. L. HEROLD, Notary Public.

458 Shreveport, La., April 10, 1912.

Officee of the Jeems Bayou Fishing & Hunting Club.

At a meeting of the Board of Directors, of the Jeems Bayou Fishing & Hunting Club, at its office on April 1912, the following resolution was unanimously adopted, to-wit:

Resolved that M. L. Scovell, President of the Jeems Bayou Fishing & Hunting Club, is authorized to convey to Thomas H. Pitts and Albert L. Pitts, transferee of Amory C. Pitts, sole heirs of Robert L. Pitts, deceased, the North fifteen acres of the Northeast quarter (NE¼)

of the Southwest quarter (SW¼) of Section Ten (10) Township Twenty (20) North Range Sixteen (16) West, Caddo Parish, Louisiana, same being in full satisfaction settlement and compromise of all differences existing between the said parties and the Jeems Bayou Hunting & Fishing Club, involving title to the said Southwest quarter (SW¼) of Section Ten (10) Township Twenty (20) North, Range Sixteen (16) West, Caddo Parish, Louisiana, as set forth in suit No. 13999 on the docket of the First Judicial District Court of Caddo Parish, Louisiana, now on appeal to the Supreme Court of the State of Louisiana being No. 18953 on the docket of that Court; and that as a consideration of said conveyance by the said Jeems Bayou Fishing & Hunting Club to said Albert L. Pitts and Thomas H. Pitts of the said Fifteen Acres, the said Albert L. Pitts, and the said Thomas H. Pitts, and as heirs of the said Robert L. Pitts, and transferees of their co-heir, Amory C. Pitts, are to ratify and confirm the said Jeems Bayou Fishing & Hunting Club's title to all the balance of said Southwest quarter (SW¼) of Section Ten (10) Township Twenty (20) North Range Sixteen (16) West, Caddo Parish, Louisiana.

M. L. SCOVELL, President.

A true copy

W. A. KERLEY, Secretary.

Indorsed:—Filed and recorded April 19, 1912. F. A. Leonard, Clerk. Con. Book 75, page 205.

459 State of Louisiana,
Parish of Caddo.

I hereby certify that the above and foregoing is a true and correct copy of the original act, as the same now appears on file and of record in my office.

Given under my hand and seal of office this the 12th day of April, 1918.

A. S. HARDIN,
Deputy Clerk and Ex-Officio Deputy Recorder.

Indorsed:—A. L. Pitts et al vs. Jeems Bayou F. & H. Club. Compromise. Deft. 15. R. B. Cook, Stenographer, Filed Jan. 21, 1919.

460 (DEFENDANT'S EXHIBIT NO. 16—LEASE FROM JEEMS BAYOU FISHING AND HUNTING CLUB TO PRODUCERS OIL COMPANY, OF DATE OCT. 17/10).

Shreveport, Oct. 18, 1910.

In all cases where oil is treated by leasee no deduction charge shall be made out of the portion coming to the lessor because of such treatment, but such proportion shall be delivered as treated.

This refers to lease dated October 17, 1910, by Jeems Bayou Fishing & Hunting Club to the Producers Oil Company.

(Signed) PRODUCERS OIL CO.,
Per C. P. CLAYTON, Agent.
JEEMS BAYOU FISHING & HUNTING CLUB,
Per M. L. SCOVELL, Prest.

Attest:
N. C. BLANCHARD,
W. A. KERLEY.

Shreveport, La., Oct. 18, 1910.

Producers Oil Company
To Jeems Bayou Hunting & Fishing Club,
M. L. Scovell, President,
Shreveport, La.

Sub. No. .....
Made by .....
Approved for payment .....

Received of the Producers Oil Company, through C. P. Clayton, Agent, the sum of thirty-six hundred dollars ($3600.00) being in payment of bonus of an oil and mineral lease covering 48 acres of land in frac. SW¼ of Section 10 (20-16) and being in accordance with conditions of said lease.

Received October 18th, 1910, $3600.00 in full for above account.

JEEMS BAYOU FISHING & HTG. CLUB,
M. L. SCOVELL, President.

State of Louisiana,
Parish of Caddo.

This contract by and between the Jeems Bayou Fishing and Hunting Club, a Louisiana corporation, whose domicile is the Parish of Caddo, hereinafter styled the First Party, and the Producers Oil Company, a foreign corporation, doing business in Louisiana, hereinafter styled the Second Party;

Witnesseth:

That the First Party being the owner in fee of the following property and lands situated in Caddo Parish, Lou-

isiana, to-wit: Fractional Southwest quarter (¼) of Section Ten (10), Township Twenty (20) North, Range Sixteen (16) West—does hereby let and lease the same to the Second party for the purpose, use and occupancy, of drilling wells, mining, and exploring thereon and therein for oil, gas, coal and other minerals and metals, and for the purpose of maintaining thereon such buildings, machinery, pipe lines, storage tanks and other such structures as may be necessary for the conduct of said business by said Second Party.

The said lease is granted upon the following
461 terms and stipulations, to-wit:

A bonus of seventy-five dollars ($75.00) per acre is to be paid by the Second Party to the First Party upon the execution of this instrument of lease and a receipt therefor is then to be given, which receipt is to be signed in duplicate and attached to this lease, which is also to be signed in duplicate, and when so attached becomes a part of this lease.

It is agreed that this bonus shall be paid upon 48 acres of land in said fractional quarter Section.

And it is further understood and agreed that if, as the result of the litigation now pending, the holdings of the said First Party in said quarter Section shall be greater than 48 acres, then the Second Party is to pay seventy-five dollars ($75.00) per acre bonus for such excess over 48 acres, and pay it within 10 days from the date of final judgment with 5% interest from this date.

And it is likewise agreed and understood that if, as the result of this litigation, the holdings of the said First Party in said quarter Section shall be decreed to be less

than 48 acres, then the said First Party is to return to said Second Party a sum of money equal to seventy-five dollars ($75.00) an acre for the diminution of quantity under said 48 acres.

As a further consideration for this lease the Second Party is to account for and pay over in pipe lines at the mouth of oil wells, a royalty in oil equal to one-eighth (1/8) of all oil produced and saved in each well on said premises up to two hundred (200) barrels per well per day, and one-sixth (1/6) royalty on all oil produced and saved in each well in excess of two hundred (200) barrels per day.

And a further consideration of this lease is that for each and every gas well brought in on said premises from which gas is taken and used one hundred dollars ($100.00) per year is to be paid by the Second Party to the First Party.

And a further consideration is that on all other minerals found, discovered and taken from said leased premises, a royalty of one-tenth (1/10) of the net proceeds arising therefrom while same is being used from said premises is to be paid by the Second Party to the First Party.

Another consideration of this lease is the obligation undertaken by the Second Party to commence the drilling of at least one (1) well on said premises inside of nine months from this date. This well is to be drilled to the greatest depth of the deep oil sand in said locality—meaning, the oil fields of Caddo Parish,—unless oil, gas or other minerals or metals in paying quantities shall be found at the lesser depth. After commencing the drilling of a well, the work is to be prosecuted with all due diligence to completion.

It is understood that the main inducement of the First Party in making this lease to the Second Party, is to discover and market oil from said land; and to this end the exploiting of the property is not to stop at the bringing in merely of a gas well or wells.

A further consideration of this lease is the obligation by the Second Party to commence the drilling of a second (2nd) well within one hundred and twenty (120) days after completion of the first well—said second well to be drilled under conditions similar to the first.

And it is further agreed and understood and made part of the consideration of this lease, that there shall be reasonable subsequent developments of the prop-
462 erty.

The parties hereto agree that gas for heating, cooking, and lighting purposes, free of cost, from the gas wells, put down on the premises, may be used by the First Party at its Club House near the premises in question, and the like privilege is accorded the Second Party for necessary work in drilling wells, treating oil, etc., on the leased premises.

It is further agreed and understood that in case the Second Party shall fail to drill a well, as above set forth, on the leased premises within the time fixed, then this lease shall become forfeited and void as to both parties hereto, said Second Party forfeiting the bonus paid, and there shall be no further recourse by either party upon the other.

In case oil, gas or other minerals or metals shall be discovered in paying quantities upon the leased premises, then this lease shall remain in force and effect as long as said Second Party may continue to produce oil,

gas or other minerals or metals in paying quantities upon said leased premises.

It is further agreed and understood that upon the termination of this lease, from whatever cause, the Second Party shall have the right of removing from the leased premises all the pipes, machinery and property of whatever character placed thereon and therein.

It is further agreed and understood that this lease shall continue and be binding upon the heirs, successors, assigns and legal representatives of the parties hereto. This lease is specially authorized by resolution of the said First Party, a copy of which resolution is hereto attached and made part hereof.

The First Party, at whatever area of acreage the pending litigation may fix it holdings at, hereby warrants and will defend its title to said land to said Second Party, its heirs and assigns, during the term of this lease.

The pending litigation referred to above, is the suit of the Jeems Bayou Fishing and Hunting Club vs. Board of Commissioners of the Caddo Levee District No. 13,707, of the District Court of Caddo Parish, Louisiana, and the suit of A. C. Pitts, et al. vs. Jeems Bayou Fishing & Hunting Club, No. 13,999 of the District Court of Caddo Parish, Louisiana.

Done and signed in duplicate, at Shreveport, Louisiana, on this 17 day of October, A. D. 1910.

JEEMS BAYOU FISHING & HTG. CLUB,
Per M. L. SCOVELL, Prest.
PRODUCERS OIL CO.,
Per C. P. CLAYTON, Agent.

Attest:
N. C. BLANCHARD,
W. A. KERLEY.

State of Louisiana,
Parish of Caddo.

Before me, the undersigned authority, on this day personally came and appeared M. L. Scovell, known to me to be the person whose name is subscribed to the foregoing instrument, and known to me to be the President of the Jeems Bayou Fishing and Hunting Club, and in the presence of me, said authority, and N. C. Blanchard and W. A. Kerley, competent witnesses, declared and acknowledged to me that he is the identical person who executed the foregoing instrument in writing, and that he executed the said instrument for the purposes and consideration and in the capacity therein expressed.

463 Done and passed before me on this the 17th day of October, A. D. 1910.

THOMAS C. BARRET,
Notary Public, Caddo Parish, La.

ATLAS ASSURANCE COMPANY,
LIMITED OF LONDON.
Agency at Shreveport, La.,
Oct. 12th, 1910.

Excerpt from Minutes of Meeting of Board of Directors of Jeems Bayou Fishing & Hunting Club, held June 13th, 1910.

"The following resolution was offered by Mr. Cooper, seconded by W. A. Kerley:

"Resolved that the President, M. L. Scovell, be and is hereby authorized to sign a lease on the property the club owns in Section 10, Township 20, Range 16"—

I certify that the foregoing is a true and correct excerpt from the minutes of June 13th, 1910.

W. A. KERLEY, Sec'y. & Treas.
Jeems Bayou F. & H. Club.

Indorsed:—Filed and Recorded Act 25th, 1910. W. M. Levy, Dy. Clk. and ex-Off Dy. Rec. Con. Book 66, page 294.

State of Louisiana,
Parish of Caddo.

I hereby certify that the above and foregoing is a true and correct copy of the original act, as the same now appears on file and of record in my office.

Given under my hand and seal of office this the 11 day of August, 1917.

T. J. CREEGAN,
(Seal) Deputy Clerk and Ex-Officio Deputy Recorder.

(Deft. Ex. 16, R. B. Cook, Stenographer. Filed Jan. 21, 1919.

464 DFT. EX. 17.

R. B. Cook, Stenographer.

DMG—"FS" 4-207.

"B" Department of the Interior,
CRGO General Land Office,
Washington, D. C.

January 14, 1918.

I hereby certify that the annexed copy of letter dated February 1, 1897, is a true and literal exemplification from the original in this office

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

(Seal) D. K. PARROTT,
Acting Assistant Commissioner of
the General Land Office.
dmg—1

United States Senate.

Washington, D. C., Feb. 1, 1897.

Hon. Commissioner of the General Land Office,
Washington, D. C.

Dear Sir:

I enclose you some papers, maps, notes, etc., relating to lands constituting the Jeems' Bayou Club's Fishing grounds, whose domicile is Shreveport, Louisiana. These lands are situated on Ferry Lake at the mouth of James Bayou. These grounds have been surveyed by J. R. Barber, Parish Surveyor of Caddo Parish, Louisiana. The Club desires to know if the lands (colored on the enclosed map) are claimed by the Federal Government, or whether they are State lands. The lands are swamp and overflowed.

Please inform me what is necessary to be done
465 to have them listed as State lands. In this connection, it is desired to have the survey of these lands (made recently by J. R. Barber, Parish Surveyor) accepted as an official survey by the United States Surveyor General of Louisiana, or by your Bureau.

It seems that these lands were never heretofore surveyed. It is likely, that at the time the United Stotes survey of that country was originally made, the lake covered the land. The gradual receding of the lakes uncovered them.

What I want to know is, in what way can the fishing club acquire a title to the lands. They have already put some improvements there and are arranging for the clearing up and cultivation of the soil. Their purpose is, to plant a large portion of it in orchards, as well as to use it for fishing and other purposes. Return present enclosures with your reply.

Very truly yours,
N. C. BLANCHARD.

Dictated. .....

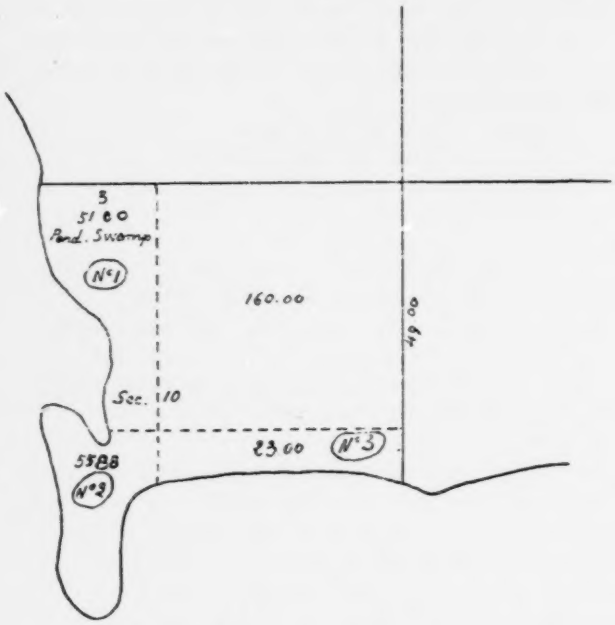
dmg-3 U. S. General Land Office. Recorded Feb. 3, 1897. 12189 Hon. N. C. Blanchard, U. S. S. Feb. 1, 1897. M. L. Scovell, Shreveport, La., Jan. 25, 1897. Encloses papers maps & c., in regard to the Jenmes Bayou Fishing grounds and how to acquire title to land embraced in them. EFE Am 1 Feby 8, 1897. (over).

Note: The lands herein described are not of record as a swamp.
Claim of State.
1897—February 3. Referred to Div. "E".
F. P. McD.
E M
Chief Div. "K".

1157—Item 24.
Filed Jan. 21, 1919.

466

T. 20 N. R. 16 W dmg. 4



N°1 { NW frac ¼ or lots 1 2 & 3
Sullin Center June 22 1895 . Pond HS 6077

N°2 SW frac 10 Stephen D Ritz April 2 1860 (Patented)

N°3 SE frac ¼ 10 Chas. W Marshall pay 13.96 Pond No 6388

{ No 4 - 1.2344 - NW NE acc. to and 142 Sec 4
1638 8 acres - Hiram H Ritz Cash 287 - aug 29 1871

467

Sec 10
Swamp. Pending
No 1
No 2
No 3
No 4
No 5
No 6
No 7
No 8
No 9
No 10
No 11
No 12
No 13
No 14
No 15
No 16
No 17
No 18
No 19
No 20
No

468 E. JE. DFT. EX. 18. F. F.

Department of the Interior,
General Land Office.
12189-1897. Washington, D. C.
February 8, 1897.

Address only the Commissioner of the General Land Office.

Hon. N. C. Blanchard,
U. S. Senate,
Washington, D. C.

Sir:

I am in receipt of your letter dated February 1, 1897, enclosing one from Mr. M. L. Scovell, President of the Jeemes Bayou Fishing and Hunting Club, dated Shreveport, Louisiana, January 25, 1897, covering a letter from Mr. J. P. Flournoy, to Mr. Scovell, with enclosures consisting of the notes and plat of the survey of a tract of land on Ferry Lake, in sections 9, 10, 15, and 16, T. 20 N., R. 16 W., Louisiana, executed by Mr. J. R. Barbour, Surveyor of Caddo Parish, Louisiana.

The survey made by Mr. Barbour embraces about 300 acres of land adjoining and outside the meander line of the official surveys heretofore made in sections 9 and 10 of said township.

You state that Club desires to know whether the lands (colored yellow on the map submitted), are claimed by the Federal Government, or whether they are State lands, the same being swamp and overflowed, and inquire what is necessary to be done to have them listed as State lands, also that it is desired to have Mr. Barbour's survey accepted as an official survey by the U. S. Surveyor General of Louisiana or by his office. You state further that it

is likely that at the time the U. S. survey of that country was originally made the lake covered the lands, and that they have been uncovered by the recession of the waters, and ask in what way the Fishing Club can acquire title to the lands.

In reply I have to state:

1st. This office has no authority to accept a survey made by a county surveyor, its action in the matter of the acceptance of surveys is confined to such surveys
469 as have been duly authorized by competent official authority, and executed by a duly appointed U. S. deputy surveyor, under contract with or instructions issued by the surveyor general and approved by Commissioner of the General Land Office as required by law.

2nd. An examination of the record shows that the public lands in sections 9 and 10 represented upon the official plats, and in front of which the lands in question have formed, have been entered by individuals, and patent has issued for some of the land. The official plat shows no unsurveyed land in the locality indicated by the map accompanying Mr. Flournoy's letter, but that Ferry Lake was duly meandered and the surveys closed thereon, and any land which may have formed between the meander and shore line of the lake since the survey and disposition of the fractional tracts bordering upon the lake is not subject to survey and disposal as public land of the United States, under existing laws, and in this connection I invite your attention to the U. S. Supreme Court decision in the case of Hardin v. Jordan, 140 U. S. Reports, 371, also to the decision contained in the same reports on page 413, in the case of Mitchell v. Smale, where the following definition of an official plat of survey is given, viz:

"The difficulty of following the edge or margin of such projections, and all the various sinuousities of the water line, is the very occasion and cause of running the meander line, which by the exclusions and inclusions of such irregularities of contour produces an average result closely approximating to the truth as to the quantity of upland contained in the fractional lots bordering on the lake or stream. The official plat made from such survey does not show the meander line, but shows the general form of the lake deduced therefrom, and the surrounding fractional lots adjoining and bordering on the same. The patents when issued refer to this plat for identification of the lots conveyed and are equivalent to and have the legal effect of a declaration that they extend to and are bounded by the lake or stream. Such lake or stream itself, as a natural object or monument, is virtually and truly one of the calls of the description or boundary of the premises conveyed; and all the legal consequences of such a boundary, in the matter of riparian rights and title to land under water regularly follow."

The map and the papers enclosed by you are herewith returned.

Very respectfully,
S. L. LAMEREAUX,
Commissioner.

470 Indorsed: Deft. 18—R. B. Cook, Stenographer.
Filed Jan. 21, 1919.

471 LETTER OF NOVEMBER 6, 1908, FROM DIRECTOR TO SECRETARY.

Deft. 19.

November 6, 1908.

The Honorable,
The Secretary of the Interior.

Sir:—

In connection with my letter of October 24 on the subject of the wanton waste of natural gas in the Caddo oil fields in northwestern Louisiana:

I have the honor to advise you that a search made by the General Land Office shows that lands remaining in Federal ownership in the neighborhood of this oil field are as follows:

Township 14 North, Range 10 West:
N. ½ NE, ¼, Sec. 14; N. ½ NW ¼, Sec. 34.

Township 15 North, Range 10 West:
Lots 9 and 10 of Sec. 8, area 8.20 acres.

Township 17 North, Range 10 West:
Secs. 26 and 35, in Lake Bistineau.

Township 18 North, Range 10 West:
S. ½ SE. ¼, Sec. 26.

Township 19 North, Range 10 West:
W. ½ NW. ¼, Sec. 30.

Township 21 North, Range 10 West:
NW. ¼ NE. ¼ SW. ¼ SE. ¼, Sec. 25.

Township 19 North, Range 12 West:
All Sec. 28 except lot in SE. ¼ SE. ¼, 3.27 acres, old bed of Lake Bodeau.

Township 15, North, Range 14 West:
NE. ¼ NW.¼, NW. ¼ NE.¼, Sec. 12.

Township 16 North, Range 14 West:
NW. ¼ NW. ¼, Sec. 24.

Township 20 North, Range 14 West:
SE. ¼ SW.¼, Sec. 8.

Township 15 North, Range 15 West:
NW. ¼ Sec, 6.

Township 17 North, Range 15 West:
NW. ¼, Sec. 5, E. ½ NE. ¼, Sec. 6.

Township 18 North, Range 15 West:
E. ½ SE. ¼, Sec 14.

Township 19 North, Range 15 West:
NE. ¼ Sec. 14, SE. ¼ NE. ¼, Sec. 26.

Township 15 North, Range 16 West:
SW. ¼ NW. ¼, Sec. 2; W. ½ NE. ¼ and SW. ¼, Sec. 18; SW. ¼, Sec. 19.

Township 16 North, Range 16 West:
W. ½ NE. ¼ and SW. ¼, Sec. 19; NE. ¼ SE. ¼, Sec. 24; W. ½ Sec. 30; W. ½ Sec. 31.

Township 17 North, Range 16 West:
S. ½, Sec. 6; Lot 2 (34.39 acres) Sec. 30.

Township 18 North, Range 16 West:
SW. ¼, Sec. 6; NW. ¼, Sec. 7; NW. ¼, E. ½ SW. ¼, SW. ¼ SW. ¼, Sec. 13; W. ½ SW. ¼ and SE. ¼ SW ¼, Sec. 28; SW. ¼, Sec. 30; E. ½ NW. ¼, Sec. 36.

Township 19 North, Range 16 West:
SW. ¼, Sec. 7; SW. ¼ SE. ¼ and W. ½, Sec. 8; SW. ¼, Sec. 30.

Township 20 North, Range 16 West:
NE. ¼, SE. ¼, Sec. 1; SW. ¼ SW. ¼, Sec. 3 (for S. ½ SW. ¼, Sec. 3, See "C", Aug. 24, 1905).

Among these lands, that located in Township 20 North, Range 16 West, and comprising the NE. ¼ SE. ¼, Sec. 1, as well as SW. ¼ SW. ¼, Sec. 3, are clearly within the known productive area of this oil and gas
472 field. The waste of natural gas referred to in my previous letter on this subject constitutes an evident drain upon the mineral resources of the public domain. If permitted to continue it will inevitably destroy the mineral value of this public land, and render it worthless in a comparatively short time.

If the Government, by reason of these holdings, can ask for an injunction against further drilling for oil or gas within the area of the Caddo field until effective measures are taken both to stop the present waste of gas and to insure wells now being drilled against similar "blowing out", I would recommend that this action be taken. Whether such an injunction is not possible, the determination of the conditions necessary for the protection of the Government and other property in this vicinity might well be entrusted to a commission to consist of a member of the Geological Survey, a member of the General Land Office and the State Geologist of Louisiana.

I have the honor to further recommend that all the lands described herein be withdrawn from entry pending the investigation now under way as to their value for oil and gas and also that all public lands in Texas within a width of two sections from the Louisiana line opposite the tract between Townships 18 and 20 in Louisiana be similarly withdrawn from entry.

Very respectfully,

GEO. OTIS SMITH, Director.

Deft's 19—Item 26. 1157.

473 (PETITION AND SUPPLEMENTAL PETITION IN SUIT 13707 OF JEEMS BAYOU FISHING & HUNTING CLUB VS. BOARD COMMISSIONERS CADDO LEVEE DIST. —DEFENDANT'S EXHIBIT NO. 24).

To the Honorable Judges of the First Judicial District of the State of Louisiana, in and for Caddo Parish:

The petition of the Jeems Bayou Fishing and Hunting Club, a corporation organized under the laws of the state of Louisiana, and having its domicile at Shreveport, Louisiana, appearing herein through M. L. Scovell, its President, who is authorized to institute this suit by the Board of Directors of said corporation, with respect represents that it (said Fishing and Hunting Club) is the owner of the Southwest quarter (¼) of Section Ten (10), Township Twenty (20) North, Range Sixteen (16) West, Caddo Parish, Louisiana, having acquired same by warranty deed, from Mrs. Sallie P. Austin on May 8, 1899; that the conveyance aforesaid from Mrs. Austin was quit claimed, ratified and confirmed by D. R. Pitts on March 3, 1905, and was further quit claimed, ratified and confirmed by Mrs. Lucie Pitts Joslyn on December 12th

and 21st, 1908; and that back of Mrs. Sallie P. Austin there is a complete chain of title to said property running back to its original entry from the United States by Stephen D. Pitts on the day of , 1860.

Petitioner further alleges that its title from Mrs. Austin and the acts confirmatory thereof were duly placed of record in Caddo Parish, to which reference is made and which said deeds are annexed hereto and made part hereof.

That the acts constituting the chain of title to said property from the Government down to Mrs. Austin are likewise of record in your said parish.

Petitioner alleges further that it is now and has been in continuous possession of said land since its acquisition from Mrs. Austin on May 8, 1899, and that she was in possession of same at the time of her sale to petitioner.

That the land in question is worth more than two thousand dollars ($2000.00).

Petitioner now avers that the Board of Commissioners of the Caddo Parish Levee District, a corporation organized by legislative act, having its domicile in
474 Shreveport, Louisiana, of which Williams Robson is President, is slandering petitioner's title to the land in question and is asserting title to same or to part thereof to be in it (said Caddo Levee Board).

That this pretended claim arises from the fact that said Levee Board owns or asserts ownership to adjoining lands, which is derived from the State as being swamp and overflowed lands, and said Levee Board, as petitioner understands and charges, claims that the land acquired by petitioner from Mrs. Austin as aforesaid, or part thereof, also passed to it as swamp and overflowed land under its grant from the State.

Your petitioner denies this, or any other claim set up to said land by said Levee Board.

Petitioner shows that this claim of the Levee Board and this slander of petitioner's title constitute a disturbance of its possession.

That your petitioner has taken the matter up with said Levee Board in the hope of having the said slander of its title and disturbance of its possession cease, but without any result.

Wherefore, petitioner prays that said Board of Commissioners of the Caddo Levee District be cited, through its said President, to answer hereto, and served with a copy of this petition, and that after legal delays and due proceedings had, for judgment decreeing petitioner the owner and possessor of the land hereinbefore described, and ordering the slander of its title and the disturbance of its possession as aforesaid, to cease.

Petitioner, alleging that a survey of the land in question is necessary to a proper understanding of this controversy, prays that a commission issue to the Parish Surveyor directing him to make a survey of the same, and due report and return thereof make according to law, with map, field notes, etc., showing the high water boundary of the land, that is to say, indicating the
475 meander or shore line of the lake or bayou against this land at high water mark, including the accretion along James Bayou, which is a navigable stream.

Petitioner further prays for all orders necessary, for costs and for general relief.

BLANCHARD BARRET & SMITH,
Attorneys for Petitioner.

ORDER.

Jeems Bayou Fishing & Hunting Club,

vs. No. ..... D. C.
Caddo Parish, Louisiana.
Board of Commissioners of the Caddo Levee District.

On reading the foregoing, it is ordered that L. Z. Crawford, Parish Surveyor, and be and is hereby appointed to make the survey prayed for, and that a commission issue to him for that purpose, and let him make due return as prayed for.

Done and signed this 20th day of April, A. D. 1910.

T. F. BELL, District Judge.

Service and Citation acknowledged this April 19th, 1910.

D. T. LAND,
Atty. for Defendant.

Be it resolved by the Board of Directors of the Jeems Bayou Fishing and Hunting Club in special session convened, that M. L. Scovell, President, is hereby authorized to bring suit against the Board of Commissioners of the Caddo Levee District for slander of title to the southwest quarter (¼) of Section Ten (10), Township Twenty (20), Range Sixteen (16), Caddo Parish, Louisiana, owned by the said Jeems Bayou Fishing and Hunting Club; and to take such steps as may be necessary to cause the said slander of title to cease.

476 I hereby certify that the above is a true and correct copy of the resolution passed by the Jeems

Bayou Fishing & Hunting Club at a special meeting of said Club, held on the 18th day of April, A. D. 1910, as shown by the minutes of said meeting of said date.

W. A. KERLEY, Secretary.

(Seal) M. L. SCOVELL, President.

Indorsed:—No. 13707 D. C. Jeems Bayou Fishing and Hunting Club vs. Board of Commissioners of the Caddo Levee District. Petition. Filed April 19th, 1910. W. M. Levy, Dy. Clk.

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477 AMENDED AND SUPPLEMENTAL PETITION.

First Judicial District, Caddo Parish, Louisiana.

Jeems' Bayou Fishing and Hunting Club,

vs. No. 13,707.

Board of Commissioners of the Caddo Levee District.

To the Honorable Judges of the First Judicial District of Louisiana, Parish of Caddo:

Now comes plaintiff and by permission of the Court files this amended and supplemental petition.

Adopting all the allegations of its original petition, except as modified herein, plaintiff corporation represents that in 1860 Stephen D. Pitts acquired from the United States the Southwest fractional quarter of Section Ten (10), Township Twenty (20) North, Range Sixteen (16) West, situated in the Parish of Caddo, Louisiana; that said fractional quarter section, according to the survey, field notes, plat and acreage returned by the United States deputy surveyor, contained 55.88 acres; that in point

of fact said fractional quarter section contained much more than 55.88 acres, for as shown by the map or plat of the survey aforesaid, said quarter section bordered on Ferry Lake and its tributary waters, navigable streams of the United States, and, hence, the waterways aforesaid were and are the boundary of the quarter Section, and plaintiff is entitled to take all the land in the fractional quarter Section to such water boundary, and that the area of same exceeds the number of acres named above.

Petitioner avers that the designation of the
478 number of acres in the fractional quarter Section by the United States deputy surveyor formed no part of the description of the land; that what was conveyed to S. D. Pitts by the Government was the fractional quarter section; that what made the quarter section fractional was that the land dipped down into the lake before the full complement of a quarter section was obtained; and that where the situation is as thus described all the lands to the water boundary goes to the entryman, or grantee.

Petitioner avers that the United States, in conveying the fractional quarter Section to Pitts, made no reservation of any land in said quarter Section, and that the original erroneous designation of the number of acres by the deputy surveyor can have no effect to defeat the grantee's claim to all the land in the fractional quarter Section as thus bounded by the water course aforesaid.

Petitioner makes part hereof, by reference, the plat or map of the survey of said fractional quarter Section as made by the deputy United States surveyor in the year 1839, to be found in the public land map books on file in the Clerk's Office of your said parish.

Petitioner now alleges that in the certificate of entry, or patent, issued by the United States to Stephen D. Pitts in 1860 the land in question in this suit was described

as the S. W. fractional quarter of Section 10, Township 22, Range 16, containing 23 acres; that it is manifest on the face of the survey and map aforesaid that this designation of the area as 23 acres was a mere clerical error by the clerk in the land office, who made out the certificate or patent; that the survey and map upon which the entry was predicated shows 55.88 acres in the said S. W. fractional quarter Section, and not merely 23 acres; and that the error in naming 23 acres as the area was made by erroneously taking the acreage in the S. E. fractional quarter of said Section 10, which the map shows
479 to be 23 acres, instead of taking the acreage, viz: —55.88, which the map shows for the S. W. fractional quarter of the Section.

Petitioner avers that this error, appearing on the face of the papers, in no wise affects the right of the grantee to take all the land in the S. W. fractional quarter of the Section to the water boundary aforesaid.

Petitioner shows the Court that what it is now claiming in this action is all the land in the fractional quarter Section aforesaid to the high water boundary of same; that it does not know with sufficient certainty at this time whether there has been any such permanent recession of dereliction of the waters of the lake aforesaid as entitles it to any claim of accretion as riparian proprietor, but that it specially reserves all rights in that particular.

Petitioner represents that the land it possesses and claims herein as aforesaid is not land that has been formed, either in whole or in part, since the survey of the fractional quarter Section by the deputy United States surveyor in the long ago.

Petitioner shows that in its original petition an error was committed in this, to-wit: the allegation was made that the land was acquired by petitioner from Mrs. Sal-

lie P. Austin, on May 8, 1899. This was error. The land was conveyed on said date by Mrs. Austin to S. N. Kerley, and by said Kerley on the 2nd day of April, 1910, to your petitioner.

Petitioner further shows that its possession as owner of said land through said Kerley and Mrs. Austin and the authors of their title, has been continuous and in good faith for periods of ten (10) years and of more than thirty (30) years.

The premises considered petitioner prays that this amended and supplemental petition be filed and
480 a copy thereof served on the defendant Levee Board and that citation issue to the latter to answer same, and after due proceedings had there be judgment as prayed for in its original petition; for all orders necessary and for general relief.

BLANCHARD, BARRET & SMITH,
Attorneys for Petitioner.

Let this amended and supplemental petition be filed and let service be made as prayed for.

Done and signed this 14th day of May, A. D. 1910.

A. J. MURFF,
District Judge.

Service accepted and citation waived.

D. T. LAND,
Attorney for Defendant.

Indorsed:—No. 13,707, D. C. Jeems' Bayou Fishing and Hunting Club vs. Board of Commissioners of the Caddo Levee District. Amended and Supplemental Petition. Filed May 14, 1910. J. H. Levy, Dy. Clk.

1157—69.

B

481 Summary.
To Jan. 1, 1918.

	Barrels.	Amount.
Total oil run from Well No. 5 separately	1,516.92	1,237.73
Total oil run from Well No. 6 separately	773.25	641.79
Total oil rum from Wells Nos. 5 and 6 operated jointly	1,640.82	1,361.89
Total oil run from Well No. 7 separately	799.67	663.72
Total oil run from Wells Nos. 5, 6 and 7 operated jointly	9,484.46	8,827.20
Total oil run from Wells Nos. 5-6-7 and 8 operated jointly	57,630.94	58,101.26
Total oil run from Wells Nos. 5-6-7-8 and 9 operated jointly	6,134.90	6,441.65
Total oil run from Wells Nos. 5 to 10 inclusive operated jointly	47,612.17	43,509.93
Total oil apportion to Wells 6-7-8-9-10 and 11 out of joint runs from Wells 1-2-3-4-6 to 11 inclusive, operated jointly	20,758.18	40,345.41
Total oil apportioned to Wells Nos. 7-8-9-10 and 11 out of runs from Wells Nos. 1-2-3-7 to 11 inclusive, operated jointly	843.20	1,686.46
Total oil apportioned to Wells Nos. 7-8-9-10-11 out of runs from Wells Nos. 2-3-7 to 11 inclusive operated jointly	1,743.18	3,486.30
Total oil apportioned to Wells 7-10 and 11 out of runs from Wells Nos. 1-3-7-10 and 11 operated jointly	275.28	550.52

Total oil apportioned to Wells 7 to 11 inclusive out of runs from all wells on lease operated jointly after Nos. 5 and 6 had ceased producing	249.80	499.65
Total oil apportioned to Wells 5 to 10 inclusive out of runs from Wells 1 to 10 inclusive operated jointly	26,745.28	21,716.25
Total oil apportioned to Wells 7 to 11 inclusive out of runs from Wells 1-2-3-4-7 to 11 inclusive operated jointly	1,088.25	2,171.94
Total oil apportioned to Wells 5 to 11 inclusive out of runs from Wells Nos. 1 to 11 inclusive, operated jointly.....	61,905.48	86,243.44
Total oil apportioned to Wells 6 to 11 inclusive out of runs from Wells 1 to 11 inclusive, operated jointly after No. 5 ceased producing	7,287.79	14,031.79
Total oil apportioned to Wells Nos. 7 to 11 inclusive, out of runs from Wells 1 to 11 inclusive, operated jointly after Nos. 5 and 6 ceased producing	858.65	1,717.25
Total gross oil apportioned as production from Wells Nos. 5 to 11 inclusive from the beginning of production from No. 5 to Jan. 1, 1918.....	247,348.22	$293,234.18

482	Value of royalty oil apportioned to Jeems Bayou Fishing & Hunting Club	$36,654.27	
	Value of net oil apportioned to Producers Oil Co.	256,579.91	$293,234.18
	Value of net oil apportioned to Producers Oil Co.		256,579.91
	Counter Claim:		
	Cost of drilling Wells Nos. 5 to 11 inclusive and approximated operating expenses to Jan. 1, 1918, as shown by Exhibits C-D-E-F-G-H and I attached and filed with Producers Oil Co. answer and Exhibits C-1, D-1, E-1, F-1, G-1, H-1 and I-1, attached to and filed with Producers Oil Co. supplemental answer.		
	Cost of drilling and operating Well No. 5	$18,152.40	
	Less salvage and credit in operating expenses as shown by statement attached	1,785.73	$16,366.67
	Cost of drilling and operating Well No. 6	18,263.14	
	Less salvage as shown by statement attached	508.41	17,754.73
	Cost of drilling and operating Well No. 7		18,888.01

Cost of drilling and operating Well No. 8	18,178.08	
Cost of drilling and operating Well No. 9	15,910.45	
Cost of drilling and operating Well No. 10	15,021.21	
Cost of drilling and operating Well No. 11	11,993.70	$114,112.85
Estimated net proceeds from Wells 5 to 11 inclusive after deduction of costs of drilling and operation		$142,466.06
Additional credit for operating expenses on Well No. 5 for April, 1917		200.40
Total		$142,666.46

483 Statement of Material Recovered Upon Abandonment of Jeems Bayou Fishing & Hunting Club Well No. 6.

1917.			
K-562, Smith Lucas Drilling Co.,			
Pulling 8″ Casing 805′8 @ .30		$241.70	
Pulling 6″ Casing 1790′9 @ .20		358.15	$599.85
1918. Shreveport transfer No. 16.			
BX-175 8″ 25.41 #Line 805′8 @ .7362		593.14	
6″ 19.46 #Drill 1790′9 @ .5486		982.40	
		$1,575.54	

Less 50% account second hand		787.77
1, 20 HP Sup. Gas Eng. with Rev. Clutch	465.00	
Less 50% account second hand		232.50
2" 4½# Tubing 2386'	351.94	
25% value of above		87.99
		$508.41

484 Statement of Material Recovered Upon Abandonment of Jeems Bayou Fishing & Hunting Club Well No. 5.

1917.		
D-505, Smith Lucas Drilling Co.,		
Pulling 621'4" of 8" Casing @ .30	$186.40	
Pulling 1079'1" of 6" Casing @ .20	215.80	$402.20
E-561, Shreveport Transfers,		
Transfer # 16,		
8" 25.41# BOHS Line 621'4" @ .7362	457.42	
6" 19.46# Rotary Drill 1079'1" @ .5486	591.99	
	1,049.41	
Less 50% account second hand.		524.70
Proportion of Operating Expenses—		
May 1917.....	207.08	
June 1917.....	200.40	
July, 1917.....	207.08	
August, 1917.....	207.08	
September, 1917.....	200.40	
October, 1917.....	207.08	
		1,229.12

1 Set Natl. Std. Rig Irons less sand reel	135.00	
1 Okla. Dbl. Drum Iron Sand Reel..	85.00	
1 20 HP Sug. Gas Eng. comp. with Rev. Clutch and Wico Igniter..	490.00	
	710.00	
Less 50% account second hand		355.00
1, 1¾ x 6′ Steel Wkg. Bbl.	5.75	
1, 2″ x 2′ Perf. Pipe	.45	
1, 1¾″ Lower WB Valve	1.15	
1, 1¾″ Upper WB Valve	1.40	
1, 2 x 1⅛ Iron Stuff, Box.....	.80	
1, 1⅛ x 11′ Polish Rod	1.80	
1, 1⅛ Ntl. Dbl. Trip	5.10	
1, Valve rod	.55	
2260 of 2″ Tubing (4#)	299.45	
	316.45	
25% value of above		79.11
		$1,785.73

485 Statement of Oil Run From Jeems Bayou Fishing & Hunting Club No. 5 for the Period Said Well Was Operated Separately, as Shown by Run Tickets.

1912.	Gross.	Roy.	Net.	Price.	Amt.
Oct. 28	710.65	88.83	621.82	80	497.46
Nov. 23	806.27	100.78	705.49	83	585.55
	1516.92	189.61	1327.31	—	1083.01

486 Statement of Oil Run From Jeems Bayou Fishing & Hunting Club No. 6 for the Period Said Well Was Operated Separately, as Shown by Run Tickets.

1912.	Gross.	Roy.	Net.	Price.	Amt.
Nov. 29	773.25	96.66	676.59	83	$561.57

487 Statement of Oil Run From Jeems Bayou Fishing and Hunting Club No. 5-6 Operated Jointly as of the Dates Shown.

1912.	Gross.	Roy.	Net.	Price.	Amt.
Dec. 3	849.23	106.15	743.08	83	616.76
4	791.59	98.95	692.64	83	574.89
	1640.82	205.10	1435.72	—	1191.65

488 Statement of Oil Run From Jeems Bayou Fishing and Hunting Club No. 7 for the Period Said Well Was Operated Separately, as Shown by Run Tickets.

1912.	Gross.	Roy.	Net.	Price.	Amt.
Dec. 10	799.67	99.96	699.71	83	580.76

489 Statement of Oil Run From Jeems Bayou Fishing & Hunting Club No. 5-6-7 for the Period Said Wells Were Operated Jointly, as Shown by Run Tickets.

1912.		Gross.	Roy.	Net.	Price.	Amt.
Dec.	12	865.56	108.20	757.36	88	666.48
	16	869.83	108.73	761.10	88	669.77
	18	852.42	106.55	745.87	91	678.74
	23	854.65	106.83	747.82	91	680.52
	27	937.52	117.19	820.33	91	746.50
1913.						
Jan.	2	850.93	106.37	744.56	91	677.55
	7	929.98	116.25	813.73	93	756.77
	11	601.62	75.20	526.42	93	489.57
	15	934.19	116.77	817.42	93	760.20
May	16	894.67	111.83	782.84	98	767.18
Aug.	31	893.09	111.64	781.45	1.05	820.52
		9484.46	1185.56	8298.90	—	$7723.80

490 Statement of Oil Run From Jeems Bayou Fishing & Hunting Club Nos. 5-6-7-8-9 for the Period Said Wells Were Operated Jointly, as Shown by Run Tickets.

1914.		Gross.	Roy.	Net.	Price.	Amt.
Feb.	3	911.25	113.91	797.34	1.05	837.21
	7	859.38	107.42	751.96	1.05	789.56
	16	848.93	106.12	742.81	1.05	779.95
	21	903.65	112.96	790.69	1.05	830.22
	25	820.23	102.53	717.70	1.05	753.58
Mar.	2	909.43	113.68	795.75	1.05	835.54
	9	882.03	110.24	771.79	1.05	810.38
		6134.90	766.86	5368.04	—	5636.44

491 Statement of Oil Run From Jeems Bayou Fishing & Hunting Club No. 5-6-7-8 for the Period Said Wells Were Operated Jointly, as Shown by Run Tickets.

1913.		Gross.	Roy 1/8	Net.	Price.	Amt.
Jan.	19	878.88	109.86	769.02	93	715.19
	23	893.01	111.62	781.39	93	726.69
	29	858.36	107.30	751.06	93	698.49
Feb.	1	984.66	123.08	861.56	98	
	8	880.10	110.01	770.09	98	
	12	878.22	109.78	768.44	98	
	19	896.70	112.09	784.61	98	
	21	952.73	119.09	833.64	98	
	24	835.58	104.45	731.13	98	
Mar.	3	931.90	116.49	815.41	98	
	5	846.35	105.79	740.56	98	
	11	900.20	112.53	787.67	98	
	17	871.92	108.99	762.93	98	
	22	897.26	112.16	785.10	98	
	26	853.99	106.75	747.24	98	
Apr.	1	884.93	110.62	774.31	98	
	7	855.86	106.98	748.88	98	
	12	725.95	90.74	635.21	98	
	15	906.13	113.27	792.86	98	
	18	911.36	113.92	797.44	98	
	27	874.65	109.33	765.32	98	
May	1	922.48	115.31	807.17	98	
	7	833.85	104.23	729.62	98	
	12	867.12	108.39	758.73	98	
	21	865.17	108.15	757.02	98	
	27	836.54	104.57	731.97	98	

June	5	9323.84	116.60	816.24	98	
	9	847.20	105.90	741.30	98	
	18	905.16	113.14	792.02	98	
	23	845.88	105.73	740.15	98	
	27	892.94	111.62	781.32	98	
July	5	853.82	106.73	747.09	98	$21,858.94
	12	886.20	110.78	775.42	1.00	
	17	816.50	102.06	714.44	1.00	
	24	900.04	112.50	787.54	1.00	
	30	854.16	106.77	747.39	1.00	
Aug.	6	945.21	118.15	827.06	1.00	
	11	894.68	111.83	782.85	1.00	
	18	927.20	115.90	811.30	1.00	5,446.00
	25	802.84	100.35	702.49	1.05	
Sept.	4	885.34	110.67	774.67	1.05	
	11	892.99	111.62	781.37	1.05	
	15	843.90	105.49	738.41	1.05	
	22	853.24	106.65	746.59	1.05	
	28	911.46	113.93	797.53	1.05	
Oct.	3	875.32	109.42	765.90	1.05	
	8	868.54	108.57	759.97	1.05	
	10	887.70	110.96	776.74	1.05	
	15	837.19	104.65	732.54	1.05	
Oct.	25	848.77	106.10	742.67	1.05	
	31	775.22	96.90	678.32	1.05	
Nov.	4	722.35	90.29	632.06	1.05	
	10	716.05	89.51	626.54	1.05	
	14	782.27	97.79	684.48	1.05	
	19	725.86	90.73	635.13	1.05	
	26	771.32	96.42	674.90	1.05	
	29	796.53	99.57	696.96	1.05	

492

1913.		Gross.	Roy 1/8	Net.	Price.	Amt.
Dec.	6	922.06	115.26	806.80	1.05	
	12	872.89	109.11	763.78	1.05	
	20	956.14	119.52	836.62	1.05	
	27	884.27	110.53	773.74	1.05	
1914.						
Jan.	3	819.59	102.45	717.14	1.05	
	9	826.83	103.35	723.48	1.05	
	14	830.69	103.84	726.85	1.05	
	20	737.95	92.24	645.71	1.05	
	26	738.44	92.30	646.14	1.05	
	28	899.46	112.43	787.03	1.05	$21,393.29
Total		57,630.94	7,203.86	50,427.06		— $50,838.60

493 Statement of Oil Run From Jeems Bayou Fishing and Hunting Club Well Nos. 5 to 10, for the Period Said Wells Were Operated Jointly as Shown by Run Tickets.

1914.		Gross.	Roy	Net.	Price.	Amt.
Mar.	12	812.60	101.57	711.03	1.05	746.58
	17	866.05	108.26	757.79	1.05	795.68
	21	827.08	103.38	723.70	1.05	759.89
	26	889.94	111.24	778.70	1.05	817.63
Apr.	2	858.93	107.37	751.56	1.05	789.14
	6	960.88	120.11	840.77	1.05	882.81
	10	862.19	107.77	754.42	1.05	792.14
	15	913.85	114.23	799.62	1.05	839.60
	20	862.70	107.84	754.86	1.05	792.60
	25	856.38	107.05	749.33	1.05	786.80

May	2	885.96	110.74	775.22	1.05	813.98
	8	910.53	113.82	796.71	1.05	836.55
	11	869.90	108.74	761.16	1.05	799.22
	16	807.41	100.93	706.48	1.05	741.80
	22	789.08	98.63	690.45	1.05	724.97
	27	910.45	113.81	796.64	1.05	836.47
	30	849.69	106.21	743.48	1.05	780.65
June	4	881.01	110.13	770.88	1.05	809.42
	10	874.88	109.36	765.52	1.05	803.80
	17	907.41	113.43	793.98	1.05	833.68
	23	925.17	115.65	809.52	1.05	850.00
	26	853.80	106.72	747.08	1.05	784.43
July	6	898.12	112.26	785.86	1.05	825.15
	13	956.21	119.53	836.68	1.00	836.68
	21	879.08	109.89	769.19	1.00	769.19
	28	939.74	117.47	822.27	1.00	822.27
Aug.	3	795.12	99.39	695.73	1.00	695.73
	8	856.10	107.01	749.09	1.00	749.09
	17	886.90	110.86	776.04	85	659.63
	28	893.25	111.66	781.59	85	664.35
Sept.	2	845.84	105.73	740.11	80	592.09
	8	875.60	109.45	766.15	80	612.92
	15	846.20	105.77	740.43	80	592.34
	25	895.76	111.97	783.79	80	627.03
Oct.	6	901.23	112.65	788.58	80	630.86
	13	899.85	112.48	787.37	80	629.90
	20	863.16	107.89	755.27	80	604.22
	27	896.90	112.11	784.79	80	627.83

Nov.	6	903.38	112.92	790.46	80	632.37
	18	885.86	110.73	775.13	80	620.10
	24	871.11	108.89	762.22	80	609.78
	28	893.01	111.63	781.38	80	625.10
Dec.	10	559.54	69.94	489.60	80	391.68
	19	877.42	109.68	767.74	80	614.19
	27	865.59	108.20	757.39	80	605.91
1915.						
Jan.	1	822.03	102.75	719.28	80	575.42
	13	832.54	104.07	728.47	80	582.78
	28	860.28	107.54	752.74	80	602.19

494

1915.		Gross.	Roy.	Net.	Price.	Amt.
Feb.	3	902.73	112.84	789.89	80	631.91
	13	864.22	108.03	756.19	80	604.95
	20	887.49	110.94	776.55	70	543.59
Mar.	2	848.56	106.07	742.49	70	519.74
	16	877.67	109.71	767.96	70	537.57
	25	903.23	112.90	790.33	60	474.20
Apr.	3	652.56	81.57	570.99	60	342.59
		47,612.17	5,951.52	41,660.65	—	38,071.19

495 Statement of Oil Run From Jeems Bayou Fishing and Hunting Club Well Nos. 1-2-3-4-6 to 11 for the Period Said Wells Were Operated Jointly, as Shown by Run Tickets.

1917.		Gross.	Roy.	Net.	Price.	Amt.
May	8	508.88	63.61	445.27	1.90	846.01
		400.01	50.00	350.01	1.90	665.02
	11	511.41	63.92	447.49	1.90	850.23
	12	498.52	62.31	436.21	1.90	828.80
	15	510.98	63.87	447.11	1.90	849.51
		346.76	43.34	303.42	1.90	576.50
	18	508.98	63.62	445.36	1.90	846.18
	19	377.39	47.17	330.32	1.90	627.42
	22	512.47	64.06	448.41	1.90	851.98
		318.06	39.76	278.30	1.90	528.77
	25	510.52	63.81	446.71	1.90	848.75
	26	485.28	60.66	424.62	1.90	806.78
	29	507.42	63.43	443.90	1.90	843.58
June	1	526.20	65.77	460.43	1.90	874.82
	2	506.69	63.34	443.35	1.90	842.38
	5	258.94	32.37	226.57	1.90	430.48
	6	517.65	64.71	452.94	1.90	860.60
	8	508.80	63.60	445.20	1.90	845.88
	10	501.73	62.72	439.01	1.90	834.12
	12	511.23	63.90	447.33	1.90	849.93
	15	519.04	64.88	454.16	1.90	862.90
	16	507.42	63.43	443.99	1.90	843.58
	19	518.14	64.77	453.37	1.90	861.40
	20	509.29	63.66	445.63	1.90	846.70
	22	518.20	64.78	453.42	1.90	861.50
	26	512.06	64.01	448.05	1.90	851.29
		521.87	65.24	456.63	1.90	867.62
	29	510.83	63.85	446.98	1.90	849.26

July	3	515.39	64.42	450.97	1.90	856.84
	6	515.02	64.38	450.64	1.90	856.22
		311.99	39.00	272.99	1.90	518.68
	10	510.82	63.85	446.97	1.90	849.24
		508.37	63.55	444.82	1.90	845.16
	13	508.46	63.56	444.90	1.90	845.31
		224.04	28.01	196.03	1.90	372.46
	17	503.95	62.99	440.96	1.90	837.82
		315.27	39.41	275.86	1.90	524.13
	20	517.37	64.67	452.70	1.90	860.13
		233.19	29.15	204.04	1.90	387.68
	24	506.97	63.37	443.60	1.90	842.84
	27	485.69	60.71	424.98	1.90	807.46
		415.21	51.90	363.31	1.90	690.29
Aug.	7	517.47	64.68	452.79	2.00	905.58
		509.25	63.66	445.59	2.00	891.18
	10	516.95	64.62	452.33	2.00	904.66
	12	507.27	63.41	443.86	2.00	887.72
	14	507.37	63.42	443.95	2.00	887.90
		462.05	57.76	404.29	2.00	808.58
	17	517.99	64.75	453.24	2.00	906.48
	19	512.47	64.06	448.41	2.00	896.82
	21	519.99	65.00	454.99	2.00	909.98
		431.94	53.99	377.95	2.00	755.90
	24	518.61	64.83	453.78	2.00	907.56

496

1917.		Gross.	Roy.	Net.	Price.	Amt.
Aug.	25	491.59	61.45	430.14	2.00	860.28
	28	518.61	64.82	453.79	2.00	907.58
	31	512.37	64.05	448.32	2.00	896.64
		129.68	16.21	113.47	2.00	226.94

Sept.	2	501.56	62.70	438.86	2.00	877.72
	4	518.10	64.76	453.34	2.00	906.68
		402.62	50.33	352.29	2.00	704.58
	7	522.17	65.27	456.90	2.00	913.80
	9	492.44	61.56	430.88	2.00	861.76
	11	521.85	65.23	456.62	2.00	913.24
	13	513.92	64.24	449.68	2.00	899.36
	15	517.98	64.75	453.23	2.00	906.46
	17	510.94	63.87	447.07	2.00	894.14
	19	519.99	65.00	454.99	2.00	909.98
		392.09	49.01	343.08	2.00	686.16
	22	522.41	65.30	457.11	2.00	914.22
	23	491.34	61.41	429.93	2.00	859.86
	25	510.96	63.87	447.09	2.00	894.18
	29	510.34	63.79	446.55	2.00	893.10
		458.14	57.26	400.88	2.00	801.76
		34,596.97	4,324.62	30,272.35	—	58,837.05
		6/10th of above total approximated as production from wells 6-7-8-9-10-11	20,758.18	2,594.77	18,163.41	35,302.23

497 Statement of Oil Run From Jeems Bayou Fishing & Hunting Club Well Nos. 1-2-3-7-8-9-10-11 for the Period Said Wells Were Operated Jointly as Shown by Run Tickets.

1917.		Gross.	Roy.	Net.	Price.	Amt.
Dec.	27	480.99	60.12	420.87	2.00	841.74
	31	491.90	61.49	430.41	2.00	860.82
	31	376.28	47.04	329.24	2.00	658.48
		1,349.17	168.65	1,180.52	—	2,361.04

5/8th of above total apportioned as production from Wells 7-8-9-10 and 11	843.20	105.40	737.80	1,475.65

Statement of Oil Run From Jeems Bayou Fishing and Hunting Club Wells 2-3-7-8-9-10-11 for the Period Said Wells Were Operated Jointly, as Shown by Run Tickets.

1917.	Gross.	Roy.	Net.	Price.	Amt.
Dec. 13	495.73	61.97	433.76	2.00	867.52
	506.01	63.25	442.76	2.00	885.52
18	521.25	65.16	456.09	2.00	912.18
20	495.07	61.88	433.19	2.00	866.38
25	422.34	52.79	369.55	2.00	739.10
	2,440.40	305.05	2,135.35	—	4,270.70

5/7th of above total apportioned as production from Wells 7-8-9-10-11	1,743.18	217.90	1,525.25	3,050.50

498 Statement of Oil Run From Jeems Bayou Fishing & Hunting Club Wells 1-3-7-10-11 for the Period Said Wells Were Operated Jointly, as Shown by Run Tickets.

1917.	Gross.	Roy.	Net.	Price.	Amt.
Dec. 9	458.79	57.35	401.44	2.00	802.88

3/5th of above total apportioned as production from Wells Nos. 7-10 and 11	275.22	34.41	240.87	— 481.71

Statement of Oil Run From Jeems Bayou Fishing & Hunting Club Lease, Showing All Wells Operated Jointly After 5 and 6 Ceased to Produce.

1917.		Gross.	Roy.	Net.	Price.	Amt.
Dec.	7	449.69	56.21	393.48	2.00	786.96
5/9th of above total apportioned as production from Wells 7-8-9-10-11 (Wells Nos. 5-6 having ceased to produce)		249.80	31.20	218.60	—	437.20

499 Statement of Oil Run From Jeems Bayou Fishing & Hunting Club Wells 1 to 10 for the Period Said Wells Were Operated Jointly, as Shown by Run Tickets.

1915.		Gross.	Roy 1/8	Net.	Price.	Amt.
Apr.	6	498.06	62.26	435.80	60	
	7	491.09	61.39	429.70	60	
	11	487.81	60.98	426.83	60	
	16	507.83	63.48	444.35	60	
	19	471.63	58.96	412.67	60	
	21	501.53	62.69	438.84	60	
	24	502.60	62.82	439.78	60	
	27	493.13	61.64	431.49	60	
May	1	492.02	61.50	430.52	60	
	3	474.65	59.33	415.32	60	
	8	489.48	61.19	428.29	60	
	11	438.76	54.85	383.91	60	
	15	457.16	57.14	400.02	60	
	21	488.61	61.08	427.53	60	
	25	463.22	57.90	405.32	60	
	30	464.84	58.11	406.03	60	

June	4	480.26	60.03	420.23	60	
		401.45	50.18	351.27	60	
	8	459.67	57.46	402.21	60	
	11	474.62	59.33	415.29	60	
	14	474.87	59.36	415.51	60	
	19	462.34	57.79	404.55	60	
	23	483.63	60.45	423.18	60	
	24	497.57	62.20	435.37	60	
	26	472.95	59.12	413.83	60	
	29	452.39	56.55	395.84	60	
July	3	445.39	55.67	389.72	60	
	7	471.61	58.95	412.66	60	
	9	504.19	63.02	441.17	60	
	12	500.09	62.51	437.58	60	
	15	485.61	60.70	424.91	60	
	19	480.59	60.07	420.52	60	
	22	460.13	57.52	402.61	60	
	27	481.68	60.21	421.47	60	
	29	494.19	61.77	432.42	60	
	30	502.81	62.85	439.96	60	$9034.44
Aug.	4	473.67	59.21	414.46	65	
	7	489.04	61.13	427.91	65	
	10	463.20	57.90	405.30	65	
	13	491.88	61.48	430.40	65	
	16	361.59	45.20	316.39	65	
	19	496.15	62.02	434.13	65	
	22	486.92	60.86	426.06	65	
	25	499.90	62.49	437.41	65	
	28	486.68	60.84	425.84	65	
	31	499.24	62.40	436.84	65	2700.58
Sept.	3	490.05	61.26	428.79	75	
	6	497.35	62.17	435.18	75	
	9	472.22	59.03	413.19	75	

12	505.31	63.16	442.15	75	
15	496.13	62.02	434.11	75	
18	496.60	62.08	434.52	75	
21	487.01	60.88	426.13	75	

500

1915.		Gross.	Roy 1/8	Net.	Price.	Amt.
Sept.	24	500.59	62.57	438.02	75	
	27	471.43	58.93	412.50	75	$2898.44
Oct.	1	512.01	64.00	448.01	80	
	5	481.53	60.19	421.34	80	
	11	505.89	63.24	442.65	80	
	18	487.59	60.95	426.64	80	
	21	498.75	62.34	436.41	80	
	24	351.06	43.88	307.18	80	
	28	482.16	60.27	421.89	80	
	31	359.17	44.90	314.27	80	2574.71
Nov.	6	508.82	63.60	445.22	1.00	
	9	501.37	62.67	438.70	1.00	
	13	470.14	58.77	411.37	1.00	
	20	517.06	64.63	452.43	1.00	
	23	512.51	64.06	448.45	1.00	
	29	456.32	57.04	399.28	1.00	2595.45
Dec.	2	479.70	59.96	419.74	1.20	
	7	456.67	57.08	399.59	1.20	
	10	510.73	63.84	446.89	1.20	
	12	466.01	58.25	407.76	1.20	
	20	492.26	61.53	430.73	1.20	
	23	476.59	59.57	417.02	1.20	
	27	509.98	63.75	446.23	1.20	3561.55

1913.						
Jan.	4	500.93	62.62	438.31	1.30	
	6	469.50	58.69	410.81	1.30	
	10	499.55	62.44	437.11	1.30	
	18	480.08	60.01	420.07	1.30	
	21	434.28	54.28	380.00	1.30	
	25	495.23	61.90	433.33	1.30	
	29	469.30	58.66	410.64	1.30	
Feb.	4	494.12	61.77	432.35	1.30	
	8	305.14	38.14	267.00	1.30	
	11	519.13	64.89	454.24	1.30	
		212.78	25.35	177.43	1.30	
	15	513.63	64.20	449.43	1.30	6123.94
Aug.	8	501.43	62.68	438.75	90	
		455.35	56.92	398.43	90	
	11	511.83	63.98	447.85	90	
		251.61	31.45	220.16	90	
	15	509.79	63.73	446.06	90	
		504.51	63.07	441.44	90	2153.42
		44,527.93	5,565.99	38,961.94	—	$31,642.53
Adjustment of Tank Tables Aug. 1915		47.54	6.00	41.54	65	27.00
		44,575.47	5,571.99	39,003.48	——	31,669.53
6/10 of above total approximated as production from Wells # 5-6-7-8-9-10		26,745.28	3,343.19	23,402.08		19,001.72

501 Statement of Oil Run From Jeems Bayou Fishing & Hunting Club Wells Nos. 1-2-3-4-7 to 11 for the Period Said Wells Were Operated Jointly, as Shown by Run Tickets.

1917.		Gross.	Roy.	Net.	Price.	Amt.
Oct.	24	515.40	64.43	450.97	2.00	901.94
	29	514.43	64.30	450.13	2.00	900.26
	29	521.79	65.22	456.57	2.00	913.14
	31	407.25	50.91	356.34	2.00	712.68
		1,958.87	244.86	1,714.01	—	3,428.02
5/9th of above total apportioned as production from Wells 7-8-9-10-11		1,088.25	136.05	952.35		1,900.45

502 Statement of Oil Run From Jeems Bayou Fishing & Hunting Club Wells 1 to 11 for the Period Said Wells Were Operated Jointly, as Shown by Run Tickets.

1916.		Gross.	Roy 1/8	Net.	Price.	Amt.
Feb.	18	503.77	62.97	440.80	1.30	
	22	521.36	65.17	456.19	1.30	
	25	502.37	62.79	439.58	1.30	
	28	519.68	64.96	454.72	1.30	
	29	322.96	40.37	282.59	1.30	2,696.04
Mar.	3	511.23	63.90	447.33	1.55	
		268.63	33.58	235.05	1.55	
	7	511.39	63.92	447.47	1.55	
		391.13	48.89	342.24	1.55	
	10	518.46	64.81	453.65	1.55	
	14	503.39	62.92	440.47	1.55	
		525.45	65.68	459.77	1.55	

	17	501.48	62.68	438.80	1.55
	18	417.19	52.15	365.04	1.55
	21	506.13	63.27	442.86	1.55
	24	516.94	64.62	452.32	1.55
		403.40	50.42	352.98	1.55
	28	525.02	65.63	459.39	1.55
		457.33	57.17	400.16	1.55
	31	512.17	64.02	448.15	1.55
Apr.	1	493.30	61.66	431.64	1.55
	4	508.58	63.57	445.01	1.55
	7	490.46	61.31	429.15	1.55
		500.89	62.61	438.28	1.55
	11	468.22	58.53	409.69	1.55
		494.35	61.80	432.55	1.55
	14	476.50	59.56	416.94	1.55
		270.67	33.84	236.83	1.55
	18	515.36	64.42	450.94	1.55
		442.21	55.28	386.93	1.55
	21	505.55	63.20	442.35	1.55
	25	501.02	62.63	438.39	1.55
		496.41	62.05	434.36	1.55
	28	503.53	62.94	440.59	1.55
		313.99	39.25	274.74	1.55
May	2	301.53	37.69	263.84	1.55
		515.40	64.42	450.98	1.55
	5	506.60	63.33	443.27	1.55
		448.47	56.06	392.41	1.55
	7	502.84	62.85	439.99	1.55
	9	492.76	61.59	431.17	1.55
	12	511.59	63.95	447.64	1.55
		279.75	34.97	244.78	1.55
	16	521.55	65.19	456.36	1.55
		502.78	62.85	439.93	1.55

	19	510.94	63.87	447.07	1.55	
		242.80	30.35	212.45	1.55	
	23	514.35	64.29	450.06	1.55	
		476.81	59.60	417.21	1.55	
	26	511.63	63.95	447.68	1.55	
	27	461.78	57.72	404.06	1.55	
	30	504.41	63.05	441.36	1.55	
June	2	509.39	63.67	445.72	1.55	
		481.77	60.22	421.55	1.55	
	6	499.87	62.48	437.39	1.55	

503 Sheet No. 2.

1916.		Gross.	Roy 1/8	Net.	Price.	Amt.
June	6	510.08	63.76	446.32	1.55	
	9	514.47	64.31	450.16	1.55	
	11	507.47	63.43	444.04	1.55	
	13	485.26	60.65	424.61	1.55	
	16	501.61	62.70	438.91	1.55	
		381.82	47.72	334.10	1.55	
	20	372.56	46.56	326.00	1.55	
		508.27	63.53	444.74	1.55	
	23	514.52	64.31	450.21	1.55	
		423.77	52.97	370.80	1.55	
	27	515.15	64.39	450.76	1.55	
		492.14	61.52	430.62	1.55	39,432.40
July	1	511.36	63.92	447.44	1.45	
		492.94	61.61	431.33	1.45	
	5	505.78	63.34	442.44	1.45	
		442.28	55.28	387.00	1.45	
	8	519.10	64.88	454.22	1.45	
	11	472.82	59.10	413.72	1.45	
		431.43	53.93	377.50	1.45	

	14	506.99	63.37	443.62	1.45	
		255.15	31.89	223.26	1.45	
	18	509.99	63.75	446.24	1.45	
		514.76	64.33	450.43	1.45	
	21	511.13	63.89	447.24	1.45	
		285.24	35.65	249.59	1.45	
	25	510.00	63.75	446.25	1.45	
		491.81	61.47	430.34	1.45	
	28	501.72	62.71	439.01	1.45	
		292.80	36.60	256.20	1.45	9,839.45
Aug.	1	508.98	63.62	445.36	90	
		517.57	64.70	452.87	90	
	4	502.88	62.86	440.02	90	
		278.73	34.84	243.89	90	
	18	509.04	63.63	445.41	90	
		281.27	35.16	246.11	90	
	22	512.88	64.11	448.77	90	
		516.52	64.57	451.95	90	
	25	510.41	63.80	446.61	90	
		228.21	28.53	199.68	90	
	29	511.89	63.99	447.90	90	
		438.53	54.82	383.71	90	
Sept.	1	512.01	64.00	448.01	90	
	2	424.39	53.05	371.34	90	
	5	510.43	63.80	446.63	90	
	8	516.83	64.81	452.22	90	
		507.74	63.47	444.27	90	
	12	515.99	64.50	451.49	90	
		505.56	63.20	442.36	90	
	15	519.04	64.88	454.16	90	
		318.74	39.84	278.90	90	
	19	517.46	64.68	452.78	90	
		452.31	56.54	395.77	90	

	22	516.41	64.55	451.86	90	
		280.96	35.12	245.84	90	
	26	515.37	64.42	450.95	90	
		402.58	50.32	352.26	90	
	29	519.24	64.91	454.33	90	
		309.91	38.74	271.17	90	
Oct.	3	511.59	63.95	447.64	90	
		487.25	60.91	426.34	90	
	6	512.85	64.11	448.74	90	

504 Sheet No. 3.

1916.		Gross.	Roy ⅛	Net.	Price.	Amt.
Oct.	6	316.73	39.59	277.14	90	
	10	513.27	64.16	449.11	90	
		460.83	57.60	403.23	90	
	13	514.33	64.29	450.04	90	
		273.13	34.14	238.99	90	
	17	494.81	61.85	432.96	90	
		440.76	55.10	385.66	90	
	20	511.17	63.89	447.28	90	
		201.04	25.13	175.91	90	
	24	510.47	63.81	446.66	90	
		456.58	57.07	399.51	90	
	27	511.63	63.95	447.68	90	
		256.81	32.10	224.71	90	
	31	513.68	64.21	449.47	90	
		482.35	60.28	422.07	90	16,640.79
Nov.	3	512.85	64.10	448.75	1.00	
		206.29	25.79	180.50	1.00	
	7	512.29	64.16	449.11	1.00	
		464.41	58.05	406.36	1.00	
	10	514.52	64.32	450.20	1.00	
		276.06	34.51	241.55	1.00	

	14	508.65	63.58	445.07	1.00	
		452.72	56.59	396.13	1.00	
	17	514.85	64.36	450.49	1.00	
		232.61	29.08	203.53	1.00	
	21	512.43	64.05	448.38	1.00	
		502.31	62.79	439.52	1.00	
	24	512.65	64.08	448.57	1.00	
		253.60	31.70	221.90	1.00	
	28	513.90	64.24	449.66	1.00	
		439.06	54.88	348.18	1.00	6,063.90
Dec.	1	515.78	64.47	451.31	1.40	
		363.61	45.45	318.16	1.40	
	5	514.23	64.28	449.95	1.40	
		477.45	59.68	417.77	1.40	
	8	512.76	64.09	448.67	1.40	
		155.06	19.38	135.68	1.40	
	12	377.87	47.23	330.64	1.40	
		501.20	62.65	438.55	1.40	
	15	516.20	64.53	451.67	1.40	
		400.09	50.01	350.08	1.40	
	19	509.97	63.75	446.22	1.40	
		497.11	62.14	434.97	1.40	
	22	513.20	64.15	449.05	1.40	
		185.81	23.23	162.58	1.40	
	26	513.59	64.20	449.39	1.40	
		501.48	62.68	438.80	1.40	
	29	510.08	63.76	446.32	1.40	
		246.52	30.82	215.70	1.40	9,569.71
1917.						
Jan.	2	511.65	63.96	447.69	1.70	
		444.60	55.57	389.03	1.70	
	5	513.30	64.16	449.14	1.70	
		168.13	21.02	147.11	1.70	
	9	511.24	63.91	447.33	1.70	
		502.50	62.81	439.69	1.70	

12	511.62	63.95	447.67	1.70	
	245.30	30.66	214.64	1.70	
16	469.57	58.70	410.87	1.70	
	513.82	64.23	449.59	1.70	
19	513.20	64.15	449.05	1.70	
	199.45	24.93	174.52	1.70	
23	394.66	49.33	345.33	1.70	
	507.14	63.39	443.75	1.70	
26	515.39	64.42	450.97	1.70	

505 Sheet No. 4.

1917.		Gross.	Roy 1/8	Net.	Price.	Amt.
Jan.	26	468.04	58.51	409.53	1.70	
	30	508.65	63.58	445.07	1.70	
		488.15	61.02	427.13	1.70	
Feb.	2	511.92	63.99	447.93	1.70	
		196.12	24.52	171.60	1.70	
	6	510.56	63.82	446.74	1.70	
		414.44	51.80	362.64	1.70	
	9	508.89	63.61	445.28	1.70	
		283.08	35.38	247.70	1.70	
	13	367.34	45.92	321.42	1.70	
	14	509.08	63.63	445.45	1.70	
	16	488.83	61.10	427.73	1.70	
		319.56	39.95	279.61	1.70	
	20	504.55	63.08	441.47	1.47	
		411.49	51.44	360.05	1.70	
	23	498.05	62.26	435.79	1.70	
		179.28	22.41	156.87	1.70	
	27	502.53	62.82	439.71	1.70	
		470.63	58.83	411.80	1.70	21,810.83

Mar.	2	506.71	63.34	443.37	1.90	
		239.16	29.89	209.27	1.90	
	6	504.42	63.05	441.37	1.90	
	9	510.56	63.82	446.74	1.90	
		348.86	43.61	305.25	1.90	
	12	512.65	64.08	448.57	1.90	
	13	447.01	55.88	391.13	1.90	
	16	511.31	63.91	447.40	1.90	
		309.29	38.66	270.63	1.90	
	20	513.27	64.16	449.11	1.90	
		473.78	59.22	414.56	1.90	
	23	511.63	63.95	447.68	1.90	
		242.82	30.35	212.47	1.90	
	26	212.75	26.59	186.16	1.90	
	27	502.49	62.81	439.68	1.90	
		339.58	42.45	297.13	1.90	
	30	507.12	63.39	443.73	1.90	
		351.25	43.91	307.34	1.90	12,531.62
Total		97,280.10	12,160.10	85,120.63	—	118,584.74
7/11th of above total apportioned as production from wells 5-6-7-8-9-10-11		61,905.48	7,738.22	54,167.68		75,463.01

506 Statement of Oil Run From Jeems Bayou Fishing & Hunting Club Wells 1 to 11, After Well No. 5 Ceased Producing Up to Time Well No. 6 Ceased Producing, Operated Jointly as Shown by Run Tickets.

1917.		Gross.	Roy 1/8	Net.	Price.	Amt.
Apr.	3	502.29	62.78	439.51	1.90	
		465.09	58.13	406.96	1.90	
	6	506.39	63.30	443.09	1.90	
		242.66	30.33	212.33	1.90	
	10	503.20	62.90	440.30	1.90	
		494.08	61.76	432.32	1.90	
	13	510.05	63.76	446.29	1.90	
		276.88	34.61	242.27	1.90	
	17	501.26	62.66	438.60	1.90	
		470.24	58.78	411.46	1.90	
	20	502.50	62.82	439.68	1.90	
	21	413.83	51.73	362.10	1.90	
	24	504.24	63.03	441.21	1.90	
		287.55	35.94	251.61	1.90	
	27	503.42	62.93	440.49	1.90	
	29	517.20	64.65	452.55	1.90	
May	1	510.31	63.79	446.52	1.90	
		360.22	45.03	315.19	1.90	
	4	512.37	64.04	448.33	1.90	
	5	479.64	59.95	419.69	1.90	15,067.95
Oct.	2	505.44	63.18	442.26	2.00	
	5	517.67	64.71	452.96	2.00	
	6	510.59	63.82	446.77	2.00	
	9	525.23	65.65	459.58	2.00	
	12	511.47	63.94	447.53	2.00	
	16	512.50	64.06	448.44	2.00	5,395.08
Total		12,146.32	1,518.28	10,628.04	—	20,463.03

6/10th of above total apportioned as production from Wells 6-7-8-9-10-11	7,287.79	910.97	6,376.82	—	12,277.82

507 Statement of Oil Run From Jeems Bayou Fishing & Hunting Club Wells 1 to 11 After Nos. 5 and 6 Ceased Producing, Operated Jointly as Shown by Run Tickets.

1917.	Gross.	Roy 1/8	Net.	Price.	Amt.
Oct. 16	516.51	64.56	451.95	2.00	
19	516.41	64.55	451.86	2.00	
23	512.63	64.08	448.55	2.00	2,704.72
	1,545.55	193.19	1,352.36	—	2,704.72
5/9th of above total apportioned as production from wells 7-8-9-10-11	858.65	107.30	751.30	—	1,502.60

Indorsed: No. 1157. Deft. 25. Filed Jan. 21, 1919.

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508 (REPORT OF SPECIAL MASTER.)

In United States District Court, Western District of Louisiana.

Nos. 1153, 1154, 1155, 1156, 1157, 1158, 1159, 1160, 1162, 1163, 1164, 1165, 1167, 1168, 1170, 1171, 1172.

To the Honorable Rufus E. Foster, Judge, U. S. District Court, Western District of Louisiana:

May It Please Your Honor:

Having been appointed by Your Honor Master in Chancery in the above cases to take the evidence and

report findings and conclusions of law thereon, and after having heard the testimony and arguments of counsel, I beg to make this my report. In considering the two cases I have found they naturally group themselves into two classes which I have designated as class "A" and class "B."

Class "A" includes the following cases:

United States vs. C. W. Lane, et al, No. 1153.
United States vs. Chas. J. Green, Jr., et al, No. 1155.
United States vs. Jeems Bayou Hunting & Fishing Club, et al, No. 1157.
United States vs. Gulf Refining Company of Louisiana, No. 1158.
United States vs. W. H. Enders, et al, No. 1160.
United States vs. Southwestern Gas & Electric Company, et al, No. 1162.
United States vs. J. M. Walling, et al, No. 1163.
United States vs. Mrs. Jessie M. La Robadierre, et al, No. 1164.
United States vs. A. C. Loucks, et al, No. 1165.

Class "B" includes the following cases:

United States vs. W. W. Green, et al, No. 1154.
United States vs. Henry Hunsicker, et al, No. 1156.
United States vs. Arkansas Natural Gas Co., et al, No. 1159.
United States vs. R. B. Norvell, et al, No. 1167.
United States vs. W. H. Mathews, et al, No. 1168.
United States vs. Dillard P. Eubank, et al, No. 1170.
United States vs. Mrs. Lydia H. McMullen, et al, No. 1171.
United States vs. Sam Mason, et al, No. 1172.

In Class "A" the defendants deny the title of the United States. In Class "B" they admit the title to the lands in dispute are still in the United States, but set up that they in due course according to law
509 made mineral locations thereon of which they cannot be divested.

First in consideration I take up Class "A" suits of which the case of United States vs. Jeems Bayou Hunting & Fishing Club, et al, No. 1157, is most typical of the contentions raised by the United States and the defendant in Class "A" suits. Concisely stated in the class "A" suits the contention of the United States is that the ownership of the lands in dispute has never at any time passed from it; that in point of fact they were in the category of unsurveyed public lands until December, 1916, and that since that survey no alienation has been made by the government and that defendants are without any muniment of title.

On the contrary the defendants deny that the lands were in the catigory of unsurveyed lands prior to March 1917 and aver that prior to that date, to-wit: 1839, their lands were surveyed by A. M. Warren, Deputy United States Surveyor, mapped and filed in the Federal Land Office, the land sold and United States Patent issued therefor, and that the defendants have good title derived by mesne conveyances from the original patentees. In the survey of 1839 of Township 20, the government claims that the surveyor left out of the survey 987.77 acres, 248.87 acres of which is involved herein and to which the government claims defendant has no title. The above are the out-standing contentions. There lands are all border lands lying on Ferry Lake and are all in Township 20, Range 16 West Louisiana Meridian, and lie in the following sections of said township, to-wit: three, four, five, eight, nine, ten, twelve, thirteen,

fifteen, sixteen, twenty-three, twenty-four, twenty-five, twenty-seven and thirty-two.

In addition to the above general statements of the issues made by defendant there are in the pleadings such issues as denial of the right to make a re-survey of Township 20 on the ground that the order therefor directs the survey from Range 10 to Range 11, which is not inclusive of range 16; also that lands in controversy were in character swamps and passed to the State; and that the alleged unsurveyed lands in this township lying on the Lake, were formed by relictions and passed to the defendant holders as riparian proprie-
510 tors.

Altho such contensions were set up by defendants pleadings they were as the trial progressed, in a number of the cases, practically abandoned and the controversy settled down on the pivot of whether the lands in controversy, at the time in 1839 when a survey of this township was made by the government were in point of fact included; or if not in point of fact included in 1839 survey, yet the government should be held, as respects defendants and their authors in title, in law as virtually having thru its own surveyor and his maps held out that all lands in question at that date were included, and therefore should not be permitted at this date to revise its representation thru its surveyor and maps to the prejudice of defendant, even tho the lands in controversy were in place and not included in map. This would reduce the controversy to a question of law. To make this clear I will take up the cases seriatim and first the case No. 1157 of United States vs. Jeems Bayou Hunting & Fishing Club, et al, as being the most illustrative of the contentions.

United States
vs. No. 1157.
Jeems Bayou Hunting and Fishing Club, et al.

This case involves lots 8, 9 and 10 aggregating 85.22 acres of Section 10, Twp. 20, N. R. 16 West and is shown on plat No. 11 of plaintiff's offering, colored red. This plat is called a supplemental plat of Twp. 20 N. Range 16 West made by A. D. Kidder and associates, United States Surveyor in 1916, and approved Marcy [March] 28, 1917. This same plat illustrates the government contention that the original survey of this township 20 by Warren, Government Surveyor in 1839 (Warren's map being plaintiff's offer 3, filed in evidence) omitted 565.98 acres of land which were in place at the time and omitted by Warren and therefore, as the Government contends, remained legally as unsurveyed Government Land even after Warren made his map (p. 3) and returned it with his field notes to the surveyor general's office. The omitted areas are shown on Plat 11 and appear all around the
511 border of Terry Lake, but the greatest area omitted by Warren in the original survey lies in Sec. 10. As stated already the original survey and maps of this land by the government was by Warren in 1839 and a replica of this map is in evidence (P. 3). This survey shows the area in the southwest fractional quarter, Sec. 10, as containing 55.88 acres and represents section 9 lying west of section 10 as being no land at all. As a matter of fact subsequent surveys made by Bristol in 1871 and by Kidder in 1916 confirmed the fact that at the time of Warren's survey the part of Sec. 10 represented on his map as rather a long and narrow peninsular and as containing 55.88 acres actually contained 129.60 acres additional and that Warren's map showing section 9, lying west of section 10 as

water, actually had at that time 66.29 acres, entirely omitted from Warren's survey and 28.33 acres in Section 16 which Warren's survey and map ignores altogether.

This brings me to the consideration of the fact claimed by the Government, to-wit: Were the lands in section 10 aggregating 129.60 acres, in section 9 aggregating 66.29 and in section 16 aggregating 28.33 acres actually in esse as high lands at the time of Warren's survey. To determine this matter the United States Government ordered a resurvey in 1913 and 1914 and an extension survey in 1916 and 1917 of the lands in township 20, Range 16 West. This work was done under their instructions by Arthur D. Kidder, supervisor of surveys. The re-survey was made in 1913 and 1914 and the extension survey in 1916 and 1917. In the course of this survey Mr. Kidder and his associates re-established and reproduced the survey made by Warren in Township 20 N. R. 16 West and made the official plats and maps herein filed (all approved by the department of the Government Land Office). On the trial before me, it is specially admitted in suits herein Nos. 1153, 1158, 1162, 1163, and 1164 that these surveys, maps and plats by Kidder were executed according to the instructions of the Government Land Office and that such plats correctly re-established and reproduced the survey made by Warren in Township 20, N. R. 16 West in strict accordance with the original survey.

Altho in this suit there is no admission in the record to the same effect, yet in the arguments, oral and in brief, there is no attack on the accuracy of the
512 map of Kidder. Much interesting testimony was adduced by the Government to prove its contention that the lands in these suits were in actual place as high lands when Warren made his survey but

were ignored by Warren in making his survey and treated as non-existant by him and also to prove that in the section to the west and south where Warren's map and field notes represent that the shore of Ferry Lake lay, there was in point of fact high lands with the actual shore line distant 2700 and 2500 feet at furthest and 725 to 990 feet nearest.

This testimony was furnished not only by Kedder and his associates who actually did the work, but also by three distinguished scientists, one a Geologist, Prof. Frank Leverett of the University of Michigan, and two geologists, Prof. Lionel J. James of the Dept. of Agriculture of the United States and Dr. Henry C. Contes, Professor of Plant Ecology in the University of Chicago.

One of the first things to determine in reproducing the Warren survey and to show the exact status of the land and water at that period and the period of 1812 when Louisiana came into the Union was to determine the mean high water mark of the Ferry Lake at that period or the contour line, as it is called, of the lake.

This was done by a study of the wave action on the border of the lake by the Geologist which consisted of shore marks and also of a study of the soil in the bed of the lake and on the upland borders; also by a study of the tree growth on the shore and the lake and the various timber belts on the shore consisting of cypress; above this, overcup oaks and other trees which would not grow upon lands permanently covered by water. In this recognizance work they directed stakes to be set at the margin between the cypress timber and overcup oaks. It is established by Kidder's testimony that the high water elevation of Ferry Lake in 1839 (the date of Warren's survey) and in 1812 when Louisiana was admitted into the Union, was 173.09 feet above gulf level. Certain birth marks as to the high water eleva-

tion of Ferry Lake with reference to the Gulf Level (or sea level) have been established by Army Engineers on Red River and in this township 20 dating back as far as ..... and these were identified and used by Kidder in locating the 173.09 contour of the lake and the contour actually made by the surveyors around the entire border of Ferry Lake. When this contour was made it was found to practically coincide with 173.09 acres high water level already independently located and staked by the Geologist and Ecologists. It was also found that Warren's survey was actually made by him with reference to this same level and contour. In returning the lines of Warren's survey following Warren's field notes and directions, Kidder found that in the termination of all the section lines to the lake shore Warren had stopped at the 173.09 level and also that in retracing many of Warren's meander lines on the border of the lake, he (Warren) had run them either exactly or approximately on the 173.09 contour (which had already been located and worked out by Kidder and the scientists as the shore before the above verification by Warren's own date). The 173.09 contour is confirmed by the Louisiana-Texas Boundary Commission in 1841; also by Moore's survey in 1846 and Boyd's survey of 1854, dealing with certain other lands on Ferry Lake.

513

A more detailed reference to the evidence and discussion thereof on this point might be made, but the fact that Warren recognized the 173.09 elevation as existing at the time of his survey is expressly made in the suits herein, Nos. 1153, 1158, 1162, 1163, and 1164, and is not seriously denied, since all evidence is in, by the other defendant litigants. The admission on this matter finally made in the above suits is as follows:

"2. That the contour line of 173.09 feet above Gulf level established by the said Arthur D. Kidder, Supervision of Surveys, as the mean high water elevation of Ferry Lake in 1812 when Louisiana was admitted into the Union, and in 1839 when A. W. Warren made his survey of Township 20, North of Range 16 West, was in reality the mean high water elevation of Ferry Lake and James Bayou, at such dates, and that the meander line of Ferry Lake and James Bayou, as run by said Kidder, follows said contour of 173.09 feet.

"3. That all of the tracts in controversy in these suits lie above the mean high water elevation of Ferry Lake as it existed in 1812 and 1839.

514 "4. That the various tracts of land lying between the meander line of Ferry Lake and James Bayou as run by the said Arthur D. Kidder, and the line represented as a meander line upon the plat of said original Warren's survey, hereinabove referred to, including the tracts in controversy in these consolidated causes, were in 1812 and 1839, at all times since said date, and now are, lands in place and of the same character, geological formation, and quality, as the lands surveyed by said Warren, as aforesaid, that said tracts of land are now and were in 1812 and 1839, and at all times since said dates, what is known in this locality as hill land, covered with native forest trees and vegetation characteristic of hill land, and that all of said lands were at the dates mentioned and at all times subsequent thereto uplands in character and existed as such at the time of the said Warren's survey and in 1812.

"5. That the various tracts of land embraced in the extension survey of the said Arthur D. Kidder,

Supervisor of Surveys, and represented upon the plats aforesaid, including the property in controversy in these consolidated causes, were not formed by accretion, or by the recession or reliction of the waters of Ferry Lake or James Bayou since 1812." (See stipulation of counsel in cases mentioned, pages 2 and 3.)

On their basis of 173.09, Kidder and his associates were able by taking Warren's field notes, to track him over the exact terrain which he walked in 1839 and found beyond a doubt in this section that when Warren reached nearly the point of the land shown on his map as a narrow peninsula in the southwest quarter of section 10 in township 20, north range 16 west, he carelessly left the shore line of the lake, running a short distance to the west on a line through highlands well timbered, leaving the lake shore 725 feet south of him and then turning approximately north, ran his line through high lands without reference to the actual shore line of the lake which in point of fact was at that time at least 2770 feet to the west of his survey. By so doing he ignored the presence of the land in question in this suit which at that time was in place and most of it seven feet high than the land actually surveyed by him and made a map showing 55.88 acres as containing all the land in the alleged southwest fractional quarter of section 10. This is well illustrated by map 31 of plaintiff in evidence. The land so omitted was topographically surveyed, its elevations taken by
515 Kidder and associates and map of it shows it to have been even above the 180 foot contour (which was the high water stage at that period of Red River and Ferry Lake) and none of it below the 173.09 level on which Warren based his survey.

It is also, by the scientists already mentioned, proven that this land so left out by Warren was at the time

of his survey well timbered high land with a growth on it of pine, oak and red gum, etc. It is proven by the scientists that this same sort of growth was in this land as far back as 1800. From a comparison of Warren's map, plaintiff 3, in evidence, with Kidder's survey as shown by Map 31 Plaintiff's evidence, page 9, it is apparent that the little peninsula mentioned by Warren as the fractional southwest quarter of section ten does not represent either the area or shape of the land, certainly in place at the time of his survey—nor does it even approximate the real area and shape. It is impossible to accept his southern or western line as a real meander of the shore. It will be seen from map 31 of Plaintiff's evidence that the lots involved in this suit are far from the total area omitted by Warren in his survey of the western fractional one-half of section ten. The area of the land is 85.22 acres; the other lands omitted by Warren from his survey in this point approximate 118.46 acres plus a body of land lying north of the above land aggregating 280.87 acres surveyed by Bristol in 1871, all of which Warren's map returns as lake.

I find therefore as a fact that this land in question was and is not alluvial nor swamp nor overflowed nor formed by retection, recession or accretion but it was high lands in place in 1812 and 1839.

I find also as a fact that the land in question was not surveyed by Warren in 1839 and should be classed in the catigory of unsurveyed public lands of the United States prior to the survey made by Kidder unless the defense set up by defendant shows a divestiture of the ownership of the government since the Warren survey.

The defendant, the Producers Oil Company, claim under a lease from the Jeems Bayou Hunting & Fishing Club, in 1910, and put down the oil wells on this land (the Texas Company bought the oil produced

516 therefrom from the Producers Oil Co.) The Producers Oil Company therefore is bound to defend the title of the Jeems Bayou Hunting & Fishing Club. A consideration of the same and the special defenses set up is now in order.

The United States issued to S. D. Pitts on April 2, 1860, a patent "to the Fractional Southwest quarter of Township 20, N. R. 16 West, according to the official field notes and plot of survey in the Government Land Office." The Patent stated the land conveyed was 23 acres. As a matter of fact Warren's map represents the fractional southwest quarter of section 10, containing 55.88 acres (there is a suggestion that Pitts actually intended to buy the southeast quarter of this section which is shown by Warren's map as containing 23 acres.)

But inasmuch as the title calls for the Southwest quarter, this fractional southwest quarter according to Warren's field notes and directions actually contained approximately 48 acres (the volume of the 55.88 acres and about 7 acres as shown by Warren's map in this peninsular being in the northwest quarter of Section 10). Pitts got the patent and paid for 23 acres.

As stated in the outset in this opinion, the lots or land in controversy here were not as a matter of fact embrased within the Warren line but lie entirely out of the 48 acres which Pitts actually took under the Warren survey. The Jeems Bayou Hunting & Fishing Club purchased from Pitts and succeeded to all the rights under his patent, no more and no less.

Certain preliminary defenses in this and the other cases were passed on by your Honor and rejected. The contentions in the pleadings that the land in question was swamp and overflowed land and that it was uncovered by a recession of the water and belonged to Pitts and his succession in title as Reparian owners is

not pressed; in fact, the James Bayou Hunting & Fishing Club in a suit No. 17707 on the Docket of the District Court, Caddo Parish vs. Levee Board, denied that the land in controversy was ever swamp or overflowed land and also denies "that the same has been formed either in whole or in part since its survey in
517 the long ago." In other words, an admission that the land in dispute was actually in place as high land when Warren made his survey in 1839.

As above stated, I have already concluded that the land in dispute was in place as high land (equally as high and most of it higher than the land actually surveyed by Warren) when Warren made his survey and I have also found that Warren did not actually survey this land and that his survey which purports to show a narrow peninsula at no point over 400 feet wide with the lake on its western and northwestern boundary in point of fact was not true, that the lake at the time of his survey was over half a mile away and at its nearest point on the south 725 feet distant; besides there were lands in this section and section 3 subsequently surveyed by Boyd and Bristol, which shows in Warren's map as water, which was actually high land in place, aggregating the whole 370.56 acres. In Warren's survey in this township, a grand total of 987.77 acres of high land in place at the date of his survey is shown to have been omitted from his map. Considering this to be true, defendants argue that the Government should be estopped from denying the verity of Warren's map at any time after third parties have bought, much less at this late day.

This leads to the law question involved. After a review of the authorities my opinion is that the Government is not estopped when it is satisfied that there was manifest error or material variation between the traverse line of the Lake represented on a map and the

true border of the Lake; but may order a resurvey and treat the land omitted from the first survey, as public land, which has never been surveyed from the public domain.

The Supreme Court of the United States in 142 U. S., 161, states the law thus: as to the rights of the Government when it believes there is error or fraud in the surveys already made: "The power to make and correct surveys of public lands belongs exclusively to the political department of the Government and the action of that department is unassailable in the Court except by direct proceedings." D. 189 U. S. 35—Do 168 U. S. 589.

The case in 189 U. S. Kernan vs. Murphy,
518 is directly in point, a survey was made by Howe, the U. S. Surveyor, where the meander line was at a considerable distance from a lake. The lake, in fact, existed, but not at the place represented on the plat. The result of the false meander was the omission of a large body of land between the so-called meander and the lake. The department ordered a new survey (as in the case at bar) and parties claiming the omitted body of land enjoined the execution of the survey, but the Court rejected the injunction holding that the department not only has the power to make correction surveys, but "It must primarily determine what are public lands subject to survey and disposal." In a recent case decided by the Supreme Court of the United States, Lee Wilson & Co. vs. U. S., 245 U. S. 24, it is announced: "If in the making of a survey of public lands, an area is through fraud or mistake meanded as a body of water or lake where no such body of water exists, riparian rights do not accrue to the surrounding lands and the land department, upon discovering the error, has power to deal with the meandered area, to cause it to be surveyed and lawfully to dispose of it.

Altho the general rule is that a meander line is not usually one of boundary yet this meander line must have certain requirements stated below, and if it does not have those requirements it is a boundary line.

The case of Producers Oil Co. vs. Hanszen, first decided in the Supreme Court of Louisiana, 132 La. 691, and affirmed in the Supreme Court of the United States in 238 U. S. 325, settles the question as to whether Warren's so called meander line in his survey of the southwest quarter of Sec. 10, Twp. 20, R. 16 (the land herein involved lying in that quarter section and actually in place in 1812 and 1839, as now) is to be treated as a true meander line, or whether it must be treated as a boundary line limiting the patentee to the actual area within the boundary. Both the Supreme Court of Louisiana and the Supreme Court of the United States decided that a surveyor's traverse fails in all respects as a meander line when it was made without regard to a body of water, and does
519 not approximate its contour, or when substantal areas throughout the twp. lying between the so-called meander line and the body of water which it pretends to deliniate, have been omitted. In either case the traverse is a boundary of the adjoining patented lands and reparian rights do not accrue. Tested by this the so-called meander line established by Warren of this section, as above described, does not meet any of the requirements set forth by the Supreme Court of the United States, because:

(1) It is (at the point under discussion) not "an accurate survey of the meanderings of the watercourse."

(2) It does not show "the place of the watercourse and its sinuosities.

(3) It does not "define the sinuosities of the banks or the water."

(4) It is false, erroneous and misleading in that it does not afford any reliable means "of ascertaining the quantity of the land in the fraction, subject to sale, and which is to be paid for by the purchaser," 7 Wallace 272, R. R. Co. vs. Schumier. In 159 U. S., page 40, Howe vs. Smith, it is held that "It is unnecessary to speculate why it was that the surveyor (Warren in the case at bar) did not survey the omitted land; it may have been a mere oversight, but whatever the reason, the fact is obvious that no survey was made of that body of land." "Altho it was unsurveyed it does not follow that a patent for the surveyed tract (herein the Pitts patent) adjoining, carries with it the land which, perhaps, ought to have been, but which was not in fact surveyed. The patent conveys only the land which is surveyed, and it is clear from the plat and the survey (i. e., the field notes, etc.) that the tract surveyed terminated at a point other than the real bank of the river as the patent carries no land beyond the terminal fixed by the surveyor."

The land actually purchased and paid for by Pitts (as above stated he actually got more than he paid for) was conveyed and covered by the description of courses and distances set forth in Warren's field notes and referred to in the Pitts patent, and the
520 United States is concluded as to such land. Giving the Patentee all of the land in areas stated in the patent and described and contained in lines and distances in such patent and which is all he paid for, protects him and his succession in title and the government should not be concluded by the fraudulent or gross negligence of its surveyor, 193 U. S. 167, Security Land & Ex. Co. vs. Burns (in that case the real

lake or water at the point in question was about half a mile away from the pretended meander.)

Again 232 U. S. 452, Gautier vs. Marian, "If the area in question designated and meandered as a lake, was in truth high land susceptible of cultivation, it was as much public lands after the survey as if its true character had been reported by the surveyor, it was merely left unsurveyed (in that case there was no reference in the field notes or plat to the omitted areas) Do. 175 U. S. 300, 185 U. S. 50. In 232 U. S. 186-7, Chapman & Dewey L. Co. vs. St. Francis Levee Dist., "these public lands are patented as to the official plat of the surveyor returned to the Government Land Office by surveyors, but the notes, lines, landmarks and other particulars appearing on the plat must be considered in interpreting the patent.

The last expression of the Supreme Court in the above case of Wilson & Company vs. U. S. 245, U. S. 24, definitely settle the substantial point in controversy here. "If in the maps of a survey of public lands, some area is through fraud or mistake meandered as a body of water or lake where no such body of water exists, reparian rights do not accrue to the surrounding lands, and the land department upon discovering the error has the power to deal with the meandered area, to cause it to be surveyed and lawfully to dispose of it."

It is impossible therefore to escape the legal conclusion that lots contended for herein must be held to be public government lands, the property of the United States and that neither Pitts under his patent, nor the Jeems Bayou Hunting & Fishing Club nor its
521 lessee the oil companies have any title thereto. So holding, it remains to consider the claims of the government for the oil and other minerals taken therefrom and the form of judgment that should be rendered against the defendant. The Government

contends that it is entitled to recover the value of oil extracted from the lots by the defendants on the theory that they are all wilfull trespassers and that the general rule is that the measure of damages for a tortious conversion is the value of the property converted with interest. My conclusion is that defendants herein are innocent of any intent to do wrong and therefore the costs of extracting the oil and other minerals should be allowed, this embraces the cost of drilling and completing the wells and the cost of administering same in order to deliver the oil at the surface for delivery into commerce. This is the rule announced by our own Supreme Court in the case of Cook vs. Gulf Refining Co., 135 La. 609, and satisfies the equitable principle that no man should enrich himself at the expense of others.

Commonly speaking minerals cannot be approved until brought to the surface and the true owner should undoubtedly be awarded their value at that stage but not until the labor and expense of the person doing the work of bringing them from the bonds of the earth have been allowed where this person is acting in moral good faith tho under a mistaken idea as to the true conditions of the title. On this basis I think the government may recover not only from the oil company, defendants, who developed and brought to the surface the oil, but also from the marketing company who received the oil at the well from the producing company and also from the persons to whom royalties were paid to the extent of such payment, C. C. of La., 2452, Thornton vs. Oil & Gas Co., page 43; 135 La. 990, Elder vs. Ellerbe.

Since all the evidence was put in there is no dispute as to the amount of the oil extracted and marketed from the wells up to June 30, 1917, inclusive. I find as a

fact that the amount of oil so extracted by the Producers Oil Co. and delivered to the Texas Company up to June 30, 1917 inclusive, to be 247,348.27 barrels and that its value at the time of the extraction was $293,234.18.

I find that the cost of drilling and equipping the wells, operating same and delivering the oil at
522 the surface, to be $113,912.45. The difference between these two items is $179,321.73, representing the net value of the production. Of this amount the Producers Oil Co., paid to the Jeems Bayou Fishing & Hunting Club $36,654.27 as royalties, leaving the Producers Oil Co. and the Texas Company the net amount of $142,667.46. These amounts must be returned to the true owner of the land, the United States.

I therefore recommend:

1. That the land in question be decreed to be the property of the United States.

2. That defendants be permanently estopped from transferring on same, or removing any oil or other minerals therefrom, and that they deliver the property to the United States and that the lease of said land by the defendants, Jeems Bayou Hunting & Fishing Club and the Producers Oil Company be annulled.

3. That the United States recover from the Producers Oil Co., and the Texas Company in solido, $142,667.46.

4. That the United States recover from the Producers Oil Co., the Texas Company and the Jeems Bayou Hunting & Fishing Club, in solido, the sum of $36,654.27 for royalties paid by the said club.

5. I recommend further that the rights of the Government be recovered from defendants of the value of all oil produced from the wells on the land since June 30, 1917 inclusive.

No. 1153, United States vs. Lane, et al.
No. 1158, United States vs. Gulf Refining Co., of La.
No. 1162, United States vs. Southwestern Gas & Electric Co., et al.
No. 1163, United States vs. J. M. Walling, et al.
No. 1164, United States vs. Robediere, et al.

The above cases were consolidated for the purposes of trial and the following stipulations of fact were made by counsel for both sides.

1. "That the surveys made herein by Arthur D. Kidder, Supervisor of Surveys, and his associates and assistants, were made under instructions issued by the Commissioner of the General Land Office, as shown by letters of date September 27, 1913, and of December 1, 1916, from Clay Tallman, Commissioner of the General Land Office, to the said Arthur D. Kidder, Supervisor of Surveys, which will be offered in evidence herein by plaintiff, and that said surveys were made conformably to said instructions; that the surveys referred to herein are represented by certain official plats approved July 24, 1916, and March 28, 1917, which will be offered in evidence by plaintiff; that the plats made by the said Arthur D. Kidder, or under his supervision hereinabove referred to, correctly depict the surveys as made by him, and that all the figures, measurements, courses, distances, elevations and topographic features shown on said plats are correct. It is also admitted that the said Arthur D. Kidder, Supervisor of Surveys,
523 correctly re-established and reproduced the survey made by A. W. Warren, Deputy Sur-

veyor, of Township 20, North of Range 16 West, in strict accordance with the said original Warren survey, the said original survey being represented upon the official plat approved August 31, 1839.

2. That the contour line of 173.09 feet above mean Gulf level, established by the said Arthur D. Kidder, Supervisor of Surveys, as the mean high water elevation of Ferry Lake in 1812, when the State of Louisiana was admitted into the Union, and in 1839 when A. W. Warren made his survey of Township 20, North of Range 16 West, was in reality the mean high water elevation of Ferry Lake and James Bayou, at such dates, and that the meander line of Ferry Lake and James Bayou as run by said Kidder follows said contour of 173.09.

3. That all of the tracts in controversy in these suits lie above the mean high water elevation of Ferry Lake as it existed in 1812, and 1839.

4. That the various tracts of land lying between the meander line of Ferry Lake and James Bayou as run by the said Arthur D. Kidder, and the line represented as a meander line upon the plat of said original Warren survey hereinabove referred to, including the tracts in controversy in these consolidated causes were in 1812 and in 1839, at all times since said dates, and now are lands in place and of the same character, geological formation; and quality as the lands surveyed by said Warren, as aforesaid; that said tracts of land are now and were in 1812 and 1839 and at all times since said dates, what is known in this locality as hill land covered with native forest trees and vegetation characteristic of hill land, and that all of said lands were at the dates mentioned and at all times subsequent

thereto, uplands in character and existed as such at the time of the said Warren survey and in 1812.

5. That the various tracts of land embraced in the extension survey of said Arthur D. Kidder, Supervisor of Surveys, and represented upon the plats aforesaid, including the property in controversy in these consolidated causes, were not formed by accretion, or by the recession, or reliction of the waters of Ferry Lake or James Bayou since 1812.

6. That Ferry Lake is and was in 1812 and 1839 a navigable body of water.

7. This stipulation shall not be construed as an admission upon the part of defendants that the land in controversy were not included within the survey made by A. W. Warren, as a matter of law; the defendants contending that under the Warren survey their titles extended to mean high water elevation.

8. Plaintiffs and defendants shall have the right to offer evidence in these causes, and these admissions shall not be construed as preventing them, or any of them, from introducing additional evidence."

The total area involved in these suits is 79.95 acres. The Lane case involves Lot 1 of Sec. 3, T. 20, N. R. 16 West and contains 5.67 acres. The Gulf Refining Company of La. involves 11.49 acres. The Southwestern Gas & Electric Co., involves 27.87 acres. The Walling case involves 12.72 acres. The LaRobediere case involves 22.20 acres.

It will be seen from the above stipulation that the land involved was of the same character as that in the Jeems Bayou Hunting & Fishing Club, i. e.,

524 high land with high land timber growth, never at any time a part of the bed of the lake, but really the same quality and character of land as that actually within the Warren Survey.

It is also admitted that Kidder's survey in retracing Warren's work is correct; and from this follows the admission that the various areas contended for shown as a result of Kidder's reproduction of Warren's work, are correctly set forth, totalling 79.95 acres which were actually left out between the mean high water mark of the Lake and Warren's line. These admissions, which correspond with the evidence which overwhelmingly proved the fact; put the cases in the same catigory it would seem, with the Jeems Bayou Hunting & Fishing Club wherein a finding in favor of the Government has just been made. Defendants, however, while conceeding the above fact, contends these cases should be differentiated from the Jeems Bayou Hunting & Fishing Club case because the areas involved in each of these cases are comparatively very small and that the maxim de minimis lex non curat should apply.

They contend that in these particular cases the lines run by Warren are substantially meander lines, admitting that, as contended for by plaintiff, at some points in skirting the shore of Ferry Lake Warren did abruptly (and technically speaking wrongfully) quit the shore line almost at right angles and deliberately left out, between his courses and the real senuosity of the lake shore, high timbered lands in place, but that he also embraced within his meander as land, bits of water almost equalling the land left out, which resulted in the Government losing nothing, because in patenting the particular areas the Government got paid for as many acres as if Warren had carefully followed the contour and sinuosities of the Lake—therefore, if Warren did wrongfully leave out between his meander and

the actual shore, the high timber lands, it is a case damnum obsque injuria so far as the government is concerned. On page 4 of their brief defendants say with respect to the Lane case, "With respect to the Warren survey Kidder admits taking the meander line as the boundary, there were included 10.9 acres of
525 lake which never belonged to the United States, and there was omitted 8.38 acres of land which should have been included." Again on page 5, "Kidder testifies that taking the whole of the northern shore of Ferry Lake involved sections 3, 10, 11, 12, 13 and 24 surveyed by Warren, the area of land lying between the Warren meander line and Kidder's establishment of the 173.09 contour line, was 69.56 acres, while the same meander line of Warren's included within his survey and shown as land, an area actually lying in the lake and never belonging to the United States Government, of approximately 44 acres." Thus reducing the actual acreage of land owned by the government by the difference between 69.56 and 44 acres, or 25.56 acres of land." Also on page 5 the defendants say on this point, "With respect to land contested for in suit 1164 as being in sections 25 and 36, the area, 22.20 acres, is trivial when compared with the quantity of land surveyed." Warren's map of section 25 shows 29.25 acres; he left out 8.90 acres or nearly one-third of the land. The land contended for in Sec. 24 is 11.49 acres. Warren's survey shows 114.80 acres not counting this, 11.49 acres, or a shortage of about 10% of the actual high land. In section 13 the amount of land claimed as left out by Warren's survey is 27.87 acres; Warren's map shows 115 acres, nearly 16% of the actual area omitted. In Sec. 10 the amount claimed herein as unsurveyed is 12.72 acres, the other land in this section left out as shown in Jeems Bayou Hunting & Fishing Club is 116.89 acres or a total of 129.61. Warren's map shows

289.88 acres, which means nearly 30% of the actual high land in the section omitted by Warren.

Kidder describes the survey made by Warren of the land in Sec. 3 as follows:

In Lot 1 of Sec. 3 (United States vs. Lane), Warren began his traverse on the southern boundary of the section at a point which was then six feet under water. This point is not covered by the water now because the lake has receded. The second course emerges from the water, crosses the boundary of the lake and begins to ascend the upland. His angle point 2, is above the 173.09 contour. The third course is through timber, undergrowth and over highland above the 180 foot contour, and, instead of being near the border of the lake is back in the woods and large timber. His fourth course left the highland and went back in the direction of the lake. The fifth course paralleled the border of the lake but was below the contour being 6 feet lower than the mean water elevation. The end of
526 the fifth course was exactly on the 173.09 contour. The difference in elevation between the first and second course is over 8 feet, that is, between angle points one and two.

Mr. Kidder says he sighted through the telescope along this course and found that he was actually "out from the lake to a point of lowland beyond the border of the lake. In measuring along the line we were going over the low hill which projects out into James Bayou at this place running through upland, timber and undergrowth. There is nothing on the ground to indicate that the border of the James Bayou ever occupied that position."

The line does not parallel James Bayou and, if intended as a meander, it is absolutely incorrect, the error being manifest.

Warren began his traverse here below the mean high water elevation and returned to the bayou at a point which agrees exactly with the contour. The line runs over a hill and as a result Lots 1 and 2 of Section 3 were omitted. These two lots contain an area of 8.38 acres in one compact body. Warren also omitted Lot 3 containing 9.05 acres, making a total of 17.13 acres omitted in this section." (57.64).

Plaintiff's brief contends as follows: Kidder describes Warren's survey of Sec. 10 in reference to omissions of land contended for in lot 7, as follows:

"In lots 7 of Sec. 10, (United States vs. Walling), Mr. Kidder found it necessary, in reproducing Warren's line through Sec. 10, to begin at the meander corner on the eastern boundary of Sec. 10 which was set exactly on the 173.09 contour. After paralleling the lake for two courses from this point, Warren departed from it on the third course. Following the bearings and distances given in Warren's field notes, Mr. Kidder found that when he sighted through the telescope "N. 78° W" on the third course, the line ran back into the woods on high ground 8 feet above mean water elevation. The other courses were traced out in exact accordance with the Warren field notes. The turning points on the line bore no relation to the border of the lake and were made on upland a considerable distance from the water. On the last course Warren returned to the lake at the 173.09 contour. He departed from the lake at angle point 22; shown on the Resurvey Plat."

The same comment is made as to the way in which he departed from the shore line as respects the areas omitted in the other suits. In fact, on inspection of the supplemental map filed by plaintiff marked "F"

and admitted by defendants to be asbolutely correct, shows the angles and methods used by Warren in his departure from the shore line in the cases complained of herein, and it cannot be questioned that at the points named Warren failed to run a correct meander line showing the sinuosities of the lake shore and at these points his line bears no true relation to the body of water, nor does it approximate a contour.

In reply to defendant's contention as to the comparatively small area involved in these consolidated suits, the Government's contention (which I find to be a fact) is that Warren's survey of Township
527 20, N. R. 16 West, omitted 1047.67 acres of high land, 987.77 acres actually demonstrated as being omitted by subsequent corrective survey of Boyd, Bristol and Kidder; the remainder of 59.90 acres left out "is made up of strips of ground between the Traverse and the lake which were left out because the line was run at too high an elevation. In these instances, however, the traverse was run parallel with the lake and followed the contour with some degree of reason. Hence no corrections were made in the survey in this respect. The actual water surface at the time of the Warren survey which was represented as land on his plat was 65 acres." Warren described the total area of this township as 10328.09 acres, when in point of fact at the time of his survey and in 1812 when Louisiana came into the Union, the Township actually contained 11375.76 acres of high timber lands. Warren's omissions were nearly ten per cent of the whole land and this area lying unsurveyed by Warren naturally remained as the property of the United States. Defendants, however, contend that the areas included in these suits which undoubtedly lie outside of the actual so-called meander line of Warren and between it and the mean high water mark of the Lake shore, should

be held to have passed to them under the patents obtained by their authors in title because the meander lines of Warren of the Ferry Lake shore are strictly meander lines defining the sinuosities of the water, altho a pronounced divigation was made by Warren from the shore line at the points complained of. The defendants do not deny that their authors in title got the acreage called for by the map of Warren and the patent; they only claim that taking the whole of the northern shore of Ferry Lake, including Sections 3, 10, 11, 12, 13, and 24 surveyed by Warren, the area of land lying between the Warren meander line and Kidder's establishment of the 173.09 contour line was 69.56 acres and that Warren's survey included within it about 44 acres as land which in fact was water; so the Government as respects this part of the Township would only lose the difference, or 25.56 acres, which defendants virtually admit still technically remain in the Government as left out of the Warren survey. As above stated, there is no complaint by the original patentees of any of this land that they paid the government
528 for water instead of land and that they are entitled to relief from the government; on the contrary, as far as area is concerned in the original patenting of these lands, the area marked on the map and actually surveyed by Warren was accepted as land and must be presumed as closed, and defendants cannot now eke out any title to land, admittedly not within the boundaries of the property patented, on the ground that their ancestor in title did not get quite the acreage and therefore the present defendants are entitled to hold entirely new areas belonging to the Government as an offset. Title to new and separate areas of land cannot be acquired in this way. Legal title to land from the sovereign government can be acquired in only one way,—by written transfer commonly called a patent.

Boldly stated the proposition of defendants is in effect that if the government has made a gain by selling water for land (the real fact as to this contention as respects this township is as follows:

As stated above Warren left out as is now conceded 1047.67 acres of high land from his survey. In this township, defendants contend that it would be equitable to permit the occupant of a piece of unsurveyed land in this township which land is about equal to the water area previously sold, in various parts of the township to compensate, and defeat the government's claim for said unsurveyed land by replying to the suit, "you have already been paid for all the land actually in this Township and I should keep this piece and you will really suffer no loss." As stated above defendants can only keep the areas in question by showing title. They contend the area is so little and when it was left out by Warren, so utterly worthless, that the government's claims should be dismissed on the ground of de minimis lex non curat. It is true that most of the cases dealing with the discussion of the difference between a meander line and a boundary line (the question herein involved) deal with larger areas than in these present consolidated cases, and in these areas the Courts have not hesitated to apply the principles contended for by the Government in these cases. For instance, in the case of the Jeems Bayou Hunting & Fishing Club the area actually involved was 85.22 acres. In the survey of Warren, his intention to leave out of his survey lands which
529 he should have included, according to law and his duty, was manifested just as plainly in his omission of 10 acres as in the case of a hundred acres and if in the case of the omission of a hundred acres the claimants contention is rejected and the 100 acres held to be public land belonging to the United States, why should the sale be different as respects the claimant of

10 acres? It is true that ordinarily litigations do not arise unless the fight is worth while as to values and it may be that the government, but for the discovery of oil or gas in this region would not have elected to bring suit when only 10 or 25 acres were involved, but its right to do so would have been in existence even tho it elected not to enforce it. As a matter of fact these comparatively small pieces of land are now of great value, these in the above consolidated cases valued at over $100,000.00 It seems to me the rule repeatedly announced by the Supreme Court of the United States in defining the differences between a boundary line and a true meander line must and should be applied regardless of the superficial area involved. In these 17 suits the areas in question range all the way from 5.67 to 85 acres and the proof is just as clear in the smallest as in the largest area that Warren's so called meander lines (at the points complained of) violated the rules respecting such line, to-wit: that they must in fact fairly represent the sinuosities of the body of water and practically approximate and parallel the same.

I find as a fact that at the points complained of, these lines of Warren were not run according to the above principles but that he arbitrarily in such instances left the shore at right angles thereto, blazed his way thro high lands heavily timbered, and then returning to the shore line some distance apart from his departure. The lands so left out must be held to be unsurveyed public lands and I find in favor of the Government that the areas herein involved are in that catigory and should be decreed to be the government's property.

For the reasons given in the Jeems Bayou Hunting & Fishing Club, I do not consider the defendants herein in moral bad faith, and consider that the expenses incurred by them in drilling, equipping and administering the wells on the premises should be allowed in

settling with the Government. The Amount of
530 oil extracted by the Producers Oil Company and taken away by the Texas Company I find as follows:

In 1153 United States vs. Lane, et al., 42,735.23 barrels and the value thereof $36,430.73. Amount for drilling well and operating same, $16,047.23. The difference between the total value of oil and counterclaim, $20,383.50.

The royalties paid were:

To C. D. Lane, $1,517.95.

To Board of Commissioners, Caddo Parish Levee Board, $4,553.84.

I find there should be judgment against:

1. Producers Oil Co. and Texas Co., in solido in the amount of $14,311.44 being value of total production, less counterclaim and royalties.

2. The Producers Oil Co. and Texas Co. and C. W. Lane in solido in sum of $1,517.95, amount of royalties paid Lane.

3. The Producers Oil Co., Texas Co., and Board of Commissioners, Caddo Parish Levee Board, in solido, for $4,553.84, amount royalties paid Board of Commissioners, Caddo Parish Levee Board.

In suit 1158, United States vs. Gulf Refining Company, I find the total production herein to be $6,986.62, but the drilling and operating expenses were, as I find, $10,191.00 and no royalties paid. The well was not profitable and the Gulf Refining Co. actually lost money in the operation so I recommended no money judgment against the defendants in this case, only a decree in favor of the government as owners of the land and entitled to possession thereof.

In United States vs. Southwestern Gas & Electric Co., No. 1162, I find the total value of oil extracted to be $29,946.94 (32,034.87) barrels) plus the pipe line earnings $3,203.48,—total income secured by the Gulf Refining Co. from the well. The expense of drilling and operating was $12,784.68. The royalties paid to Caddo Oil Co., $933.30. The royalties paid to the Southwestern Gas & Electric Company, $747.99.

I recommend judgment against:

1. The Gulf Refining Co., of La., for $4,899.91, being difference between the royalties and counterclaims and total value of production, not including oil con-
531 tained in pipe line.

2. Against the Gulf Refining Co. and Caddo Oil and Gas Co., in solido, for $933.30, amount royalties paid to Caddo Oil & Gas Co., by Gulf Refining Co.

3. Against Gulf Refining Co. and Southwestern Gas & Electric Co., in solido, for $3,747.99, amount royalties paid the Southwestern Gas & Electric Co., as to which no expense was incurred.

In 1164, United States vs. LaRobadiere, et al.

In this case the oil produced by the Gulf Refining Company was $8,200.60 in gross value with a counterclaim for expenses actually incurred for drilling and operating of $12,771.25. There were royalties paid to Mrs. LaRobediere amounting to $3,075.21, and there should be judgment against her for that amount.

As the well was a losing venture for the Gulf Refining Co., I think no judgment in money should be given against it, but simply against it giving the land as belonging to the government.

It appeared in the course of the trial that an added royalty was paid to Blanchard, Barret Smith of $1,305.07, and the right to litigate this matter is reserved to the Government.

No. 1163, United States vs. J. M. Walling, et al.

I find the oil produced by the Gulf Refining Company of La., of the value of $77,278.79, with a counterclaim for drilling and operating $20,643.87; difference between gross value of oil and the counterclaim, $56,634.87, for which judgment should go against the Gulf Refining Company.

It appeared in the trial that royalties had been paid by the Gulf Refining Co., to H. L. Heilperin, Natalee Oil Co., J. A. Thigpen and S. L. Herold, and the rights of the Government should be reserved as against them.

No. 1155 United States vs. Chas. J. Green, et al;

No. 1160 United States vs. W. H. Enders, et al.; consolidated.

No. 1165 United States vs. A. C. Loucks, et al.,

Two of the above cases were consolidated, the third tried separately, but they are not distinguished however from the other cases already considered by me,
532 and the facts are practically the same and the law applicable thereto practically the same as in the cases already considered by me.

The Greene case involves lots 2 and 3, Sec. 27, containing 65.77 acres as shown by Supplemental map of plaintiff marked F. The defendants claim under a patent calling for 147.25 acres as per Warren's survey; they got all their acreage and are claiming the 65.77 acres never surveyed by Warren or more than a third of the area actually purchased by Green from the United States; if defendants' contention is upheld he would have 213.03 acres when he actually bought and paid for 147.25 acres. The methods used by Warren in leaving out of this survey high timbered lands above overflow in the cases already

decided, were used in this case, it being abundantly proven in these three cases that Warren ran his so called meander line as far as 1200 feet from the true shore, working his way through high lands well timbered. This is well illustrated on the map "F" and also on the topographical map in evidence marked Plaintiff "B". The well was not profitable, the expense of drilling and operating incurred by the oil company exceeding the value of the oil and no judgment for money should be made against the Amateur Oil Company, but the Louisiana Oil Refining Co., bought the productions from the Amateur Oil Co., and out of the oil paid a royalty to Greene of $210.79 for which there should be judgment in solido against it and Greene. Afterwards the Louisiana Oil Ref. Company took over the well and paid a royalty to Greene of $186.78 and made a profit on its production of $557.75 net production after deducting the cost of production.

There should be judgment therefore against:

1. C. J. Greene and Louisiana Oil Refining Co., in solido, for $210.79.

2. Louisiana Refining Corporation, $557.78.

3. Louisiana Refining Corporation and C. J. Greene, in solido, 185.65, and against all defendants recognizing the land as the property of the United States. In this case Greene virtually acknowledged that this land was United States property. He made on Jan. 22, 1913, a mineral location embracing fractional NW ¼ of section 27, between the traverse line and the lake. In this location the land referred to as "unsurveyed." He
533 did same on June 17, 1910 "for all lands below the United States Traverse in N. W. ¼ Sec. 27." No effort to develop the land under this location was made, but this incident shows he did not consider that he was the reparian owner of the area in dispute.

No. 1160, United States vs. Enders, et al.

This property embraces 66.20 acres being lots 5 and 6 of Sec. 9, and immediately adjoining the land in controversy in Jeems Bayou Hunting & Fishing Club, lying between said Jeems Bayou Hunting & Fishing Club land and Ferry Lake. There was no serious dispute of the Government's title, defendants' pleadings asserting they had no convictions on the subject but that during 1910 veritably believing same was government land, made a mineral location; prior to the time of the withdrawal order of the President December 15, 1908. The Standard Oil Co. entered a plea of nolle contendere, but admitted it had taken oil from the land under a division order and paid the purchase price to Heilperin and asked for judgment against him in case it was held. The defendants really make no serious claim to the property as owners, but content themselves under the mineral location. The proof of the Government's ownership is as complete as in the Jeems Bayou Hunting & Fishing Club case and for the reasons therein given, judgment recognizing the United States as owners of the area in question should be entered.

As to the claim on the mineral location, your Honor has already decided that the withdrawal order of Dec. 15, 1908, was applicable to this land. So it appears defendants are without any right or legal title to the land. The Standard Oil Co. admit running oil from the land valued at $1,577.24 and paid out in royalties to the mineral locators $197.16. Judgment should go against the Standard Oil Company for $1,380.08 (with reservation of its rights to recover this amount and the $197.16 royalties against Heilprin from whom they purchased the oil) and against the defendants Levi Cooper, W. T. Crawford, W. H. Enders and Standard Oil Co., of La., in solido, for $197.16. I recommend a judgment in favor of the United States

for the land in question as prayed for by the petition, and for the above amount against the defendants.

No. 1165, United States vs. A. C. Loucks, et
534 al.

The area involved is 14.13 acres, being lot 1 of Sec. 27. The evidence in the Greene case and Jeems Bayou case was offered herein besides the testimony of Kidder and others, who with him explored the status and character of these omitted areas, and for the same reasons heretofore given by me in the cases already decided, I find the area in question was high timbered land omitted by Warren from his survey (the defendants traced title to a patent from the United States conveying 123.49½ acres and the original patentee and the defendants got this full acreage independent of the area of 14.13 acres herein claimed) and that judgment should go in favor of the United States as being the owner of the said area as not having been entered in Warren's survey. It remains to consider what money judgment should be rendered.

For the reasons given in the early part of this report, citing Cook vs. Gulf Refining Co., 135 La., 610, and in case of Elder vs. Ellerbe, et al., 135 La., 990, before any recovery by the Government for oil extracted, I think the cost of driling and equipping the wells and operating same, should be deducted.

Inasmuch as the well cost to drill and operate, $8,439.37 and the total oil taken out was only $494.00, no judgment should go against the Producing Co., to-wit: the Standard Oil Co., but out of the exploration and operation Loucks received 61.75 and the Gulf Refining Co. 52.42 and there should be judgment against them in favor of the United States for those amounts and I so recommend.

In the discussion of each case under the title of Quantum and Basis of Recovery, the contentions of the Government with respect to the amounts which should be allowed are set forth in detail. There should be a decree in favor of the Government in the respective sums heretofore stated. In addition to the recommendations previously mentioned, it is respectfully recommended:

1. That the lands involved in the respective suits be decreed by this Court to have been at all times from and after December 15, 1908, lawfully withdrawn from settlement, entry, location, sale or other form of appropriation under the Public Land or Mineral laws of the United States.

535 2. That the muniments of title under which the defendants claim may be declared null and void and held as nought insofar as they may include, directly or indirectly, the property in controversy in these suits, and, to that extent, that the said leases and transfers be cancelled and annulled. This recommendation, of course, does not include the patents on which the claims of riparian ownership are predicated, the validity of which patents is not denied by the Government. The patents, however, do not include any property in suit. This prayer of the bill of complaint relates to the leases and other transfers by which a conveyance of the various tracts was sought to be made.

3. That the lands described in the bills of complaint be adjudged and decreed to be the property of the United States, free and clear of all claims of the defendants and that the possession of said land may be restored to plaintiff.

4. That said defendants during the progress of this cause and finally and perpetually thereafter, may be enjoined from setting up any claim to said lands or any part thereof, and from creating any cloud upon the Government's title to the same, or to any of the oil, gas or minerals on or under the same, and from going upon said lands, or in any manner using the same, or extracting oil or other minerals therefrom.

5. That a receiver be appointed by this Court to take possession of said land and of all wells, improvements and drilling paraphernalia thereon and any other property and instrumentalities thereon used for the purpose of drilling and extracting, storing and transporting oil, with full power and authority to continue operations on said land in the production and sale of oil, gas and other minerals and to do and perform such acts as may be necessary to protect the property of plaintiff against injury and waste and to preserve the same.

6. That defendants be ordered, directed and required to make a full, true and accurate accounting to plaintiff of all oil extracted from said lands since January 1918, and to pay plaintiff the value thereof as ascertained by said accounting, together with all rents and royalties derived therefrom, and that all of plaintiff's rights to recover the oil produced since January 1, 1918, be reserved.

In all of the above recommendations for payment of money judgments, I recommend that interest be allowed thereon at the rate of 5% per annum until paid, from the filing of this report.

Respectfully submitted,

E. H. RANDOLPH,
Master in Chancery.

536 Indorsed:—Opinion and Recommendations E. H. Randolph of the Master in Chancery. Recorded in Chancery Order Book, Vol 5, Folio 559-587. Filed Jan. 11, 1919, 11:25 A. M.

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537 (EXCEPTION TO REPORT OF MASTER BY JEEMS BAYOU H. & F. CLUB.)

United States District Court for the Western District of Louisiana, Shreveport Division.

United States of America,
vs. No. 1157 In Equity.
Jeems Bayou Hunting & Fishing Club, et al.

Now comes the Jeems Bayou Hunting & Fishing Club, and excepts to the report of Honorable E. H. Randolph, Special Master in Chancery, filed in this cause on the 11th day of January, 1919, and for cause of exception shows:

1.

That the Master had, in his said report, stated and certified that the Fractional Southwest quarter (SW4) of Section 10, Township 20 North, Range 16 West, covered by patent from the United States, issued to Stephen D. Pitts in 1860, according to the official field notes and map of A. W. Warren, U. S. Deputy Surveyor, in 1839, on file in the General Land Office of the United States, and approved, showing Ferry Lake as a call in the description of the land granted under said patent, was limited and bounded by the meander line run by said A. W. Warren, and that the land designated as Lots 8, 9, and 10 by

a subsequent survey made by A. D. Kidder, U. S. Supervisor of Surveys, lying between said meander line and Ferry Lake, or Jeems Bayou, was in the ownership of the United States, and did not pass to the said Stephen D. Pitts under and by virtue of his patent issued by the plaintiff to him, according to the official field notes and plat of said A. W. Warren, U. S. Deputy Surveyor, filed in the General Land Office of the United States, when, in fact and in law, he, the said Master, should have stated and certified that the said Fractional Southwest quarter (SW4) of Section 10, Township 20 North, Range 16 West, extended and was bordered and bounded by the waters of Ferry Lake by virtue of said patent issued by the United States to the said Stephen D. Pitts, who purchased on the faith and verity of said survey, field notes and plat, on file in the General Land Office of the United States, demonstrated that the said Fractional Southwest quarter (SW4) of Section 10, Township 20 North, Range 16 West,
538 bordered on and was bounded by Ferry Lake, or Jeems Bayou, and not bounded by the meander line run by said A. W. Warren, U. S. Deputy Surveyor, and that the land in controversy, designated as Lots 8, 9 and 10, by the said subsequent survey, aforesaid, were embraced and included in the patent of the said Stephen D. Pitts and formed and is a part of, and incorporated in the description of the land conveyed by the said United States to the said Stephen D. Pitts, under his patent, calling for said Ferry Lake, or Jeems Bayou, as a call for boundary, and that the United States, plaintiff, has no lands, in ownership, between said meander line and said Ferry Lake.

2.

That it was error in the said Master, in effect, to have stated and certified that the facts in this case were anala-

gous to the facts, in the cases, recited in his report, at pages 10, 11 and 12 thereof, and applying the principles of law to the fact in such cases, totally different and variant, to the facts and conditions in the cases at bar.

3.

Further excepting, that the Master, in the trial of this cause, permitted, over the objections and exceptions of the defendant and its co-defendants, taken at the time, as shown by the record, pages 1, 2, 3, 4, 5, 6, 7, 8 and 9, and ruling thereto, the admissibility of the evidence and the consideration and of giving effect to, the purported corrective re-survey, field notes and plat of A. D. Kidder, U. S. Supervisor of Surveys, made in 1913-1914, and the extension surveys of March 20, 1917, whereby it was sought, thereby, to establish that the lands, in controversy, designated as Lots 8, 9, and 10, by A. D. Kidder's survey, were in the United States, and did not pass to S. D. Pitts under the patent to him in 1860, predicated on the official survey, field notes and plat of A. W. Warren, Deputy U. S. Surveyor, in 1839, on which said patent issued to him in 1860.

4.

Defendant further excepts to the report of said Master, in having, over the objections and exceptions taken by the defendant and its co-defendants, in the trial of this case, permitted, in the record, the testimony of
539 A. D. Kidder, U. S. Supervisor of Surveys, and Clements, and other expert testimony, to be taken down and received as evidence to impeach the correctness and verity of the official survey, field notes and plat of A. W. Warren, U. S. Deputy Surveyor, of 1839, on the

grounds of mistake, error or fraud, as and for the reason that no such error, fraud or mistake were alleged in the pleadings.

5.

That if such error, fraud or mistake were pleadable, and testimony admitted thereunder, it would have been error in the Master to have given weight and effect to such testimony as against said S. D. Pitts, or his assignees, who as third parties, without knowledge, could not be affected by such fraud, mistake or error, if any were committed by the said A. W. Warren, U. S. Deputy Surveyor, in the making of his said survey of said Section 10, Township 20 North, Range 16 west.

6.

For further exception, that it was error in the Master in not recommending the maintenance of the plea of estoppel pleaded by defendants in bar of the plaintiffs right to recover herein, predicated upon and supported by the admissions in the letter of S. Whendall, Commissioner of the General Land Office, to the Honorable N. C. Blanchard, dated February 8, 1897, marked Defendant's Exhibit 16, and the letter of George Otis Smith, Director, to the Secretary of the Interior, dated November 6, 1908, marked defendant's Exhibit 19, and other letters and documents admitted in evidence upon the same subject matter in the record.

7.

Further, that the said Master should have held that the said Jeems Bayou Hunting & Fishing Club and its co-defendant, the Producers Oil Company and the Texas

Company, were in no manner liable to the plaintiff for the oil taken from the land, in controversy, for, and inasmuch as the plaintiff had no right, title or interest, or ownership, in the lands, in controversy, it having divested itself of said land, under the patent issued to S. D. Pitts, predicated on the official survey, field notes and plat of A. W. Warren, Deputy U. S. Surveyor, made in
540 1839.

8.

Furthermore, defendant excepts to the report of the Master, in recommending the payment of interest on the judgment, to be rendered herein, at five per cent per annum from the date of the filing of this report, instead of recommending that interest should run from the day of judgment, if it should finally be held liable to the Government, if it be successful in recovering the land, in controversy in this cause.

BLANCHARD, GOLDSTEIN & WALKER,
Solicitors for Jeems Bayou Hunting and Fishing Club.

Indorsed:—Exception to Report of the Special Master in Chancery. Filed Jan. 24, 1919.

541 (EXCEPTION TO MASTER'S REPORT BY PRODUCERS OIL CO).

United States District Court for the Western District of Louisiana, Shreveport Division.

United States of America,

vs. No. 1157 In Equity.

Jeems Bayou Hunting & Fishing Club., et al.

Now comes the defendant Producers Oil Company, and excepts to the report of Honorable E. H. Randolph, Special Master in Chancery, filed in this cause on the 11th day of January, 1919, and for cause of exception shows:

1.

That the Master had, in his said report, stated and certified that the Fractional Southwest quarter (SW4) of Section 10, Township 20 North, Range 16 West, covered by patent from the United States, issued to Stephen D. Pitts in 1860, according to the official field notes and map of A. W. Warren, U. S. Deputy Surveyor, in 1839, on file in the General Land Office of the United States, and approved, showing Ferry Lake as a call in the description of the land granted under said patent, was limited and bounded by the meander line run by said A. W. Warren, and that the land designated as Lots 8, 9 and 10 by a subsequent survey made by A. D. Kidder, U. S. Supervisor of Surveys, lying between said meander line and Ferry Lake, or Jeems Bayou, was in the ownership of the United States, and did not pass to the said Stephen D. Pitts, under and by virtue of his patent issued by the

Plaintiff to him, according to the official field notes and plat of said A. W. Warren, U. S. Deputy Surveyor, filed in the General Land Office of the United States, when, in fact and in law, he, the said Master, should have stated and certified that the said Fractional Southwest quarter (SW4) of Section 10, Township 20 North, Range 16 West, extended and was bordered and bounded by the waters of Ferry Lake by virtue of said patent issued by the United States to the said Stephen D. Pitts, who purchased on the faith and verity of said survey, field notes and plat, on file in the General Land Office of the United States, demonstrated that the said Fractional Southwest quarter (SW4) of Section 10, Township 20 North, Range 16 West, bordered on and was bounded by Ferry Lake, or Jeems Bayou, and not bounded by the meander line run
542 by said A. W. Warren, U. S. Deputy Surveyor, and that the land in controversy, designated as Lots 8, 9 and 10, by the said subsequent survey aforesaid, were embraced and included in the patent of the said Stephen D. Pitts and formed and is a part of, and incorporated in the description of the land conveyed by the said United States to the said Stephen D. Pitts, under his patent, calling for said Ferry Lake, or Jeems Bayou, as a call for boundary, and that the United States, plaintiff, has no lands, in ownership, between said meander line and said Ferry Lake.

2.

That it was error in the said Master, in effect, to have stated and certified that the facts in this case were anologous to the facts, in the cases, recited in his report, at pages 10, 11, and 12 thereof, and applying the principles of law to the facts in such cases, totally different and variant, to the facts and conditions in the cases at bar.

3.

Further excepting, that the Master, in the trial of this cause, permitted over the objections and exceptions of the defendant and its codefendants, taken at the time, as shown by the record, pages 1, 2, 3, 4, 5, 6, 7, 8, and 9, and ruling thereto the admissability in evidence and the consideration, and of giving effect to, the purported corrective re-survey, field notes and plat of A. D. Kidder, U. S. Supervisor of Surveys, made in 1913-1914, and the extension surveys of March 20, 1917, whereby it was sought thereby to establish that the lands, in controversy, designated as Lots 8, 9, and 10, by A. D. Kidder's survey, were in the United States, and did not pass to S. D. Pitts, under the patent to him in 1860, predicated on the official survey, field notes and plat of A. W. Warren, Deputy U. S. Surveyor, in 1839, on which said patent issued to him in 1860.

4.

Defendant further excepts to the report of said Master, in having over the objections and exceptions taken by the defendant and its codefendants, in the trial of this case, permitted, in the record, the testimony of A. D. Kidder, U. S. Supervisor of Surveys, and Clements, and other expert testimony, to be taken down and received as evidence to impeach the correctness and verity of the official survey, field notes and plat of A. W. Warren, U. S. Deputy Surveyor, of 1839, on the grounds of mistake, error or fraud, as and for the reason that no such error, fraud or mistake were alleged in the pleadings.

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5.

That if such error, fraud or mistake were pleadable, and testimony admitted thereunder, it would have been

error in the Master to have given weight and effect to such testimony as against said S. D. Pitts, or his assignees, who as third parties, without knowledge, could not be affected by, such fraud, mistake or error, if any were committed by the said A. W. Warren, U. S. Deputy Surveyor, in the making of his said survey of said Section 10, Township 20 North, Range 16, West.

6.

For further exception, that it was error in the Master is not recommending the maintenance of the plea of estoppel pleaded by defendants in bar of the plaintiff's right to recover herein, predicated upon and supported by the admissions in the letter of S. Whendall, Commissioner of the General Land Office, to the Honorable N. C. Blanchard, dated February 8, 1897, marked Defendant's Exhibit 16, and the letter of George Otis Smith, Director, to the Secretary of the Interior, dated November 6, 1908, marked Defendant's Exhibit 19, and other letters and documents admited in evidence upon the same subject matter in the record.

7.

Defendant further excepts to the report of the Master, in reciting and certifying that the Producers Oil Company is the warrantor of the title of the Jeems Bayou Hunting & Fishing Club, when, in fact, he should have stated and certified that the said Jeems Bayou Hunting & Fishing Club is the warrantor of the title of the Producers Oil Company and was bound to defend the title of the said Producers Oil Company, holding under it by virtue of a certain mineral lease executed by it under date of October 17, 1910, marked Defendant's Exhibit 15,

in the record, and reserving to the said Producers Oil Company, according to its prayer in its answer, the right to sue the Jeems Bayou Hunting & Fishing Club
544 in the event of eviction from the property in controversy.

8.

Further, that the said Master should have held that the said Producers Oil Company and its codefendants, The Texas Company and Jeems Bayou Hunting & Fishing Club, were in no manner liable to the plaintiff for the oil taken from the land, in controversy, for, and inasmuch as the plaintiff had no right, title or interest, or ownership in the lands, in controversy, it having divested itself of said land, under the patent issued to S. D. Pitts, predicated on the official survey, field notes and plat of A. W. Warren, Deputy U. S. Surveyor, made in 1839.

9.

Furthermore, defendant excepts to the report of the Master, in recommending the payment of interest on the judgment, to be rendered herein, at five per cent per annum from the date of the filing of this report, instead of recommending that interest should run from the day of judgment, if it should finally be held liable to the Government, if it be successful in recovering the land, in controversy in this cause.

10.

Defendant excepts to the Master, in his report, stating and certifying that it, the Producers Oil Company, defendant, is liable in solido with The Texas Company and

the Jeems Bayou Hunting & Fishing Club, for Thirty Six Thousand Six Hundred and Fifty Four and 27-100 ($36,654.27) Dollars, for royalties paid by it to said Jeems Bayou Hunting and Fishing Club, when he should have stated and certified that the said Jeems Bayou Hunting & Fishing Club was alone, and not The Texas Company and Producers Oil Company, or either of them, liable for said royalty.

HAMPDEN STORY,
Solicitor for Producers Oil Company.

Indorsed:—Exception to the report of the Special Master in Chancery. Filed Jan. 24, 1919.

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545 (EXCEPTION TO MASTER'S REPORT BY THE TEXAS CO.

United States District Court for the Western District of Louisiana. Shreveport Division.

United States of America
vs. No. 1157 In Equity.
Jeems Bayou Hunting & Fishing Club, et al.

Now comes the defendant The Texas Company, and excepts to the report of Honorable E. H. Randolph, Special Master in Chancery, filed in this cause on the 11th day of January, 1919, and for cause of exception shows:

1.

That the said Master certified and stated that this defendant, in said cause, was liable to the United States in

solido with the Producers Oil Company for One Hundred Forty Two Thousand Six Hundred Sixty Seven and 46-100 ($142,667.46) Dollars, and that it was liable unto the said United States insolido with the said Producers Oil Company and the Jeems Bayou Hunting & Fishing Club for the sum of Thirty Six Thousand Six Hundred Fifty Four and 27-100 ($36,654.27) Dollars, the proceeds of the royalty oil received by said Jeems Bayou Hunting & Fishing Club; instead of certifying and stating that, as a marketing Company, taking the oil produced from the land, in controversy, The Texas Company was not liable, and could not, in any case, be held insolido for said royalty.

2.

That the said Master, in said report, which is excepted to on the further ground, should have stated and certified that there was no allegation in the pleadings, or any proof in support thereof, if alleged, holding the said The Texas Company liable as a joint trespasser, or as having acted in concert with the Producers Oil Company and Jeems Bayou Hunting & Fishing Club, or either of them, in extracting the oil from the land in controversy.

3.

That it further excepts to said report of the Master, in stating and certifying that interest on the amount aforesaid, insolido with the Producers Oil Company, and the Producers Oil Company and the Jeems Bayou Hunting & Fishing Club, should be allowed at five per cent per annum thereon from the filing of said report, instead of stating and certifying that the said The Texas
546 Company and Producers Oil Company, The Texas Company, Producers Oil Company, and Jeems

Bayou Hunting & Fishing Club, if held in solido, are liable for interest from the date of judgment on the amounts set out in said report, in case the United States is successful in this cause.

HAMPDEN STORY,
Solicitor for The Texas Company.

Indorsed: Exception to report of Special Master in Chancery. Filed Jan. 24, 1919.

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547 (PLAINTIFF'S EXCEPTION TO MASTER'S REPORT).

In the District Court of the United States for the Western District of Louisiana.

United States of America
v. No. 1157.
Jeems Bayou Fishing & Hunting Club, et al.

Now into this Honorable Court comes plaintiff, the United States of America, appearing herein through undersigned counsel, and excepts to the report of Hon. E. H. Randolph, Master in Chancery herein, insofar as the said report recognizes the defendants as innocent trespassers, and allows the counterclaim filed by them, for the following reasons, to-wit:

1. As shown by the plaintiff's exhibits "23" and "24" (testimony, pp. 8 and 9), the lands in controversy were withdrawn December 15, 1908 from settlement and entry or other form of appropriation "to conserve the public interest, and in aid of such legislation as may hereafter

be proposed or recommended," which said withdrawal was ratified and continued in effect by the withdrawal of July 2, 1910; said withdrawal having been issued by the President of the United States, acting by, and through, the Secretary of the Interior.

That the drilling on withdrawn lands is in contravention of the policy of the United States, as shown by said withdrawals, to retain the oil in the ground for legistative disposition. This policy precludes the consideration of any equitable benefit to the government from drilling and operation of the wells.

2. That as shown by admission of counsel (testimony, p. 368), all of the wells on the land in suit were drilled by the Producers Oil Company subsequent to Octo-
548 ber 17, 1910—that is, after the issuance of both of the withdrawal orders referred to in paragraph "1" hereof, and in violation of said withdrawal orders.

3. The Master erred in not finding and giving consideration to the fact that the said lands had been withdrawn for the purposes above stated. The evidence in the record relative to said withdrawals was clear, conclusive and uncontradicted. Said evidence consisted of plaintiff's exhibits "23" and "24" offered and admitted in evidence at pp. 8 and 9 of the record, and certain additional documentary evidence introduced in the case of the United States v. Sam W. Mason, et al., No. 1172, of the docket of this Honorable Court, being plaintiff's exhibits "A" "B" "C" "D" "E" "F-1, 2, 3, 4, 5," "G" "H" "I" "J" "K" "L" "M" "N" "O" "P" "Q" "R" "S" "T". (offered and admitted in the record of the present cause at p. 9), this Court having held, in the said Mason case, that the withdrawals included Township 20 N., Range 16 W., and prohibited mineral locations, which ruling is

applicable to this suit, and was so recognized by the Master in his report.

While no claim was, or could be, asserted by defendants under the mining laws or under mineral locations, said evidence was relevant to the issue, because the Master found that the defendants had no title to said land, and the testimony above referred to showed that defendants in taking and removing said oil violated said withdrawal orders, and prevented the disposition of said oil by Congress.

4. That there was affirmative evidence in the record showing that the defendants were not in good faith in withdrawing the oil from said land, because the Master, in his report, says:

"The contentions in the pleadings that the land in question was swamp and overflowed land and that it was uncovered by a recession of the water and belonging to Pitts and his Successors in title as riparian owners is not pressed; in fact, the Jeems Bayou Hunting & Fishing Club in a suit, No. 17707, on the docket of the District Court, Caddo Parish v. Levee Board, denied that the
549 land in controversy was ever swamp or overflowed land and also denied "that the same has been either in whole or in part since its survey in the long ago". In other words, an admission that the land in dispute was actually in place as high land when Warren made his survey in 1839."

5. That the lease from the Jeems Bayou Hunting & Fishing Club to the Producers Oil Co. (Defendant's exhibit "16" offered in evidence at p. 316 of the record) did not include or describe the property in controversy, and, hence, the said defendants had no color of title whatever.

6. That no testimony was offered by defendants, nor otherwise adduced, to show that they acted in good faith in drilling and operating the wells in question. That the defense of innocent trespass is an affirmative defense, and the defendants did not prove or attempt to prove that they extracted and removed the oil from plaintiff's land through mistake or inadvertence, nor did they show that they acted on the advice of counsel, or in the belief that they were the owners of the property. The wrongful taking of the property of another, in the absence of all other evidence, raises a presumption that the trespasser took it intentionally, wilfully or in reckless disregard of the rights of the owner, and this presumption was not overcome, nor sought to be overcome, in any manner whatever by defendants.

7. There was no evidence to show, directly or indirectly, that the defendants were in moral good faith in extracting and removing the oil in question.

Wherefore, plaintiff prays that these exceptions be sustained, and, accordingly, that the counterclaim filed by defendants be rejected and disallowed, and that there be a decree in favor of the United States and against the defendants as follows, to-wit:

(a). Against the Producers Oil Company and the Texas Company, in solido, for $256, 579.91, being the value of the total production of oil on this land, less the royalty paid to the Jeems Bayou Fishing & Hunting Club; and

550 (b). Against the Producers Oil Co., The Texas Company and the Jeems Bayou Fishing & Hunting Club, in solido, in the sum of $36,654.27, being the amount of royalty paid out of the production to the Jeems Bayou Fishing & Hunting Club.

Such sums aggregating $293,234.18, being the total value of the oil extracted and removed by defendants, as shown by the Master's report.

Plaintiff prays that in all other respects the said report and recommendations of the Master be confirmed and made the decree of this Honorable Court. Prays for all orders and decrees necessary and for general relief.

ROBERT A. HUNTER,
Special Assistant to the Attorney General.

Indorsed:—Plaintiff's Exceptions to Master's Report. Filed Jan. 30, 1919.

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551 (OPINION OF THE COURT).

In Re: Government Oil Suits.

Western Dist. of Louisiana.

Beginning in July, 1917, the United States filed eighteen suits against various persons to have certain land decreed the property of the United States, withdrawn from settlement, entry location, sale or other form of appropriation under the public land or mineral laws of the United States; to cancel certain leases of the said land to various oil companies; to enjoin any further exploitation of the land; and for an accounting from the various parties who had drilled for oil, or purchased it from the drillers, or otherwise had come into possession of the oil.

The cases were referred to the Honorable Edward H. Randolph, as Special Master, and in due course he filed his reports. The land in controversy is all located in what is known as the Caddo Lake, or Ferry Lake, Oil District,

in Caddo Parish, Louisiana. In each case the Master has reported in favor of the United States and has stated an account against the defendants who claim to own the land, against those who hold under oil leases and those who have purchased the oil extracted, either from the owners, or lessees.

Certain fundamental facts govern all the cases. It appears that in 1838 most of the land in question was surveyed for the United States by Warren. In making his survey he undoubtedly left out certain portions of land, inconsiderable as to acreage but now extremely valuable because of the underlying oil deposits. In 1916 the land was resurveyed by Kidder, and the disputed areas included in the survey. Some of the defendants claim riparian rights to the land. There is no doubt, however, that all of the land included in the resurvey was high land in place at the time the original survey of Warren was made and he simply was in error in running his lines, which is not at all surprising, considering the unsettled character of the land at that time and the difficulties surveyors must have encountered.

The land was withdrawn from entry first by a proclamation of President Roosevelt in 1908 and later by proclamations of President Taft in 1910. The land lies adja-
552 cent to Caddo or Ferry Lake and Jeems or James Bayou. It is contended by some of the defendants that Warren intended the actual shore line to be the boundary line of his survey, and the lines he actually ran, or reported that he had run, were meander lines to determine the approximate areas of the survey. In some of the cases it is admitted that the land is public domain and the defendants claim under the mining laws. A further contention is made that that there was no ownership of the oil in the Government, that oil is different to minerals of a solid character and is not susceptible of ownership until brought to the surface and separated from the soil.

The Master has found against all of these contentions, and in clear and able opinions has disposed of them. It would be useless for me to attempt to supplement the report of the Master and in my opinion his findings should be approved. The Master allowed interest from the day of the filing of his report. It is contended if ultimate judgment is against the defendants interest should be allowed only from the day of judgment. Again I must agree with the Master. The filing of his report is tantamount to the verdict of a jury and it is usual to allow interest in Federal Courts from the date of verdict rather than from the date of Judgment. It is particularly urged that there could be no judgment against the various pipe lines who purchased the oil from the drillers on the theory above stated that the government had no ownership in the oil until reduced to possession. I can not agree with this contention either. The ownership of the Government is somewhat different to that of a private proprietor and the integrity of the Government's title in any and all considerations demands that it should have a right of action against any one profiting by a violation of the laws of the United States intended as conservation measures.

The Government has excepted to the report of the Master in allowing the defendants to set-off as against the judgment for the value of the oil the cost of producing it, contending that the parties were not in good
553 faith. Considering the extreme uncertainty of the law and all of the facts in the case, I must decide this point against the Government. This disposes of the general contentions in all the cases.

In suit No. 1155, U. S. vs. C. J. Greene it is contended in argument that the Master's report was erroneous in rendering judgment against the Louisiana Oil Refining Corporation and not against the Amateur Oil Company from whom it purchased. This objection is not made in the exceptions to the Master's report filed. The Master

found there should be no judgment against the Amateur Oil Company because the well was no profitable and the expense of drilling and operating exceeded the value of the oil. He recommends judgment against the other defendants, however, because they actually got the oil. I see no reason to disagree with the conclusions of the Master. The decree will not prevent an adjustment of equities between the parties.

In case No. 1160 U. S. vs Henly et als, it is contended in argument on behalf of the Government that no counterclaim was plead or proved. I find no special exception in the record to this effect. The judgment as recommended is supported by the answers to interrogatories in the record.

The case of the U. S. vs. Thomas J. Stockley, No. 1166 is the only case presenting any difficulty but considering the views expressed in overruling the preliminary objection, I think on the whole the Master's report should be confirmed.

The labor of the Court in these complicated cases has been much lightened by the Master through his able report and by counsel through their fair and lucid arguments and briefs. All of them are entitled to the thanks of the Court.

All exceptions will be overruled and decrees will be entered in all these cases in accordance with the suggestion of the Master. Jurisdiction in each case will be retained for the purpose of adjusting any further equities between the parties.

RUFUS E. FOSTER, Judge.

July 15/19.

(Opinion.) Filed Jul. 17, 1919, W. B. Lee, Clerk, U. S. Dist. Court, West. Dist. of Louisiana.

554 (DECREE.)

In the District Court of the United States for the Western District of Louisiana. Shreveport Division.

United States of America,
v. No. 1157 In Equity.
Jeems Bayou Fishing and Hunting Club, Producers Oil Company, Texas Company.

This cause came on to be heard at this term and was argued by counsel; and thereupon, upon consideration, thereof, it was ordered, adjudged and decreed as follows:

1. That the report filed herein January 11, 1919, by E. H. Randolph, Special Master in Chancery, be and the same is hereby approved and confirmed; and, accordingly:

II. That the land described in the bill of complaint, namely, Lots Eight (8), Nine (9), and Ten (10), of Section Ten (10) in Township Twenty (20) North, Range Sixteen (16) West, Louisiana Meridian, Louisiana, situated in the Parish of Caddo, Western District of Louisiana, containing eighty-five and twenty two hundredths (85.22) acres, as shown by plat of survey approved March 28, 1917, by Clay Tallman, Commissioner of the General Land Office and ex-officio Surveyor General for the State of Louisiana, be and the same is hereby decreed to have been at all times from and after December 15, 1908, lawfully withdrawn from settlement, entry, location, sale or other form of appropriation under the public land or mineral laws of the United States.

III. That the lease made October 17, 1910, by the Jeems Bayou Fishing and Hunting Club to the Producers Oil Company, as per act recorded October 25, 1910, in Book

66, page 294, of the conveyance records of the Parish of Caddo, State of Louisiana, be and the same is declared null and void and hold for naught, insofar as it may include directly or indirectly the above described property, and, to that extent, the said lease is annulled and shall be cancelled.

IV. That the land above described shall be, and the same hereby is, adjudged and decreed to be the perfect propery of Plaintiff, the United States of America, free and clear of all claims of the said defendants,
555 or any of them, and that the possession of the said land shall be restored to plaintiff.

V. That the said defendants, namely, Jeems Bayou Fishing and Hunting Club, the Producers Oil Company and The Texas Company, shall be and they, and each of them, are hereby finally and perpetually enjoined from setting up any claim to said land, or any part thereof, and from creating any cloud upon plaintiff's title to the same, or to any of the oil, gas or minerals, on or under the same, and from going upon said land, or in any manner using the same, or extracting oil or other minerals therefrom, and, accordingly, that a writ of injunction issue restraining, enjoining and prohibiting the said defendants, and each of them, from committing the acts aforesaid, and from in any manner trespassing upon said land.

VI. That the United States of America do have and recover of the Producers Oil Company and The Texas Company, in solido, and the said defendants are hereby condemned and ordered to pay plaintiff, the full sum of One Hundred and Forty-two Thousand, Six Hundred and Sixty-seven and 46/100 ($142,667.46) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

VII. That the United States of America do have and recover of and from the Producers Oil Company, the Texas Company and the Jeems Bayou Fishing and Hunting Club, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of Thirty-six Thousand, Six Hundred and Fifty-four and 27/100 ($36,554.27) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

VIII. That the said defendants be and they are hereby ordered, directed and required to make a full, true and accurate accounting to plaintiff of all oil extracted from said land since January 1, 1918, and to pay to
556 plaintiff the value thereof, as ascertained by said accounting, together with all rents and royalties derived therefrom, and that all of plaintiff's rights to recover the oil produced from said land by the defendants since January 1, 1918, be reserved.

IX. That the said defendants be, and they are hereby, condemned and ordered to pay all the costs of this suit.

X. That pending delivery thereof to the United States of America, John H. Eastham, a resident of Shreveport, Louisiana, be and he is hereby appointed receiver to take possession of said land and of all wells, improvements and drilling paraphernalia thereon, and any other property and instrumentalities on said land, used for the purpose of drilling and extracting, storing and transporting oil, with full power and authority to continue operations on said land in the production and sale of oil, gas and other minerals, from existing wells, and to do and perform such acts as may be necessary to protect the property of plaintiff against injury and waste and for the preservation

thereof. The defendants are hereby ordered, commanded and required to surrender and deliver to said receiver the possession of said land and the aforesaid property, wells and instrumentalities thereon, upon the approval of said receiver's bond by the Clerk of this Court. The said receiver shall, within 90 days from the date of this decree, furnish bond, with good and solvent surety, to be approved by the Clerk of the United States District Court in and for the Western District of Louisiana, in the sum of Twenty-five Thousand ($25,000.00) Dollars, which said bond may hereafter be increased, or reduced, as the Court may direct, and shall be conditioned for the faithful performance of his duties and the rendition by him of a true and correct accounting and payment of all money, oil or other property that may come into his hands as receiver. The said receiver shall surrender possession of said land and all of the property that may come into his
557 custody hereunder, and shall account for and pay over to the United States of America, upon demand, or on order of the Court, all oil or money received by him in his aforesaid capacity. Jurisdiction of this cause is retained by the Court, to supervise, direct and control the acts of the said receiver, to obtain such accounting from the said receiver as the Court may order, to require the delivery to the United States of such land and property, and the accounting and payment to be made by the receiver, and generally for all purposes in connection with said receivership, with full reservation of the power to discharge or remove said receiver, and to appoint another receiver, or receivers, and to do and perform such other acts, in relation to the administration of said receiver, and the termination of said receivership, and to issue such further orders in the premises, as the Court may deem necessary.

XI. That the rights, if any, of the Producers Oil Company and the Texas Company against their warrantor, the Jeems Bayou Fishing & Hunting Club, be, and the same are hereby, reserved.

Thus done, read and signed in open Court this 4th day of August 1919.

RUFUS E. FOSTER,
United States Judge.

Indorsed: Decree. Filed Aug. 12. 1919.

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558 United States District Court for the Western District of Louisiana, Shreveport Division.

United States of America,
vs. No. 1137, In Equity.
Jeems Bayou Fishing and Hunting Club, Producers Oil Company, and the Texas Company.

To the Honorable, The Judge of the District Court of the United States, for the Western District of Louisiana. Sitting within and for the Shreveport Division.

The above named defendants, feeling aggrieved by the decree made and entered in this cause on the 4th day of August, 1919, do hereby appeal from said decree to the Circuit Court of Appeals for the Fifth Circuit, for the reasons specified in the assignment of errors which is filed herewith.

And they pray that their appeal be allowed with supersedeas, and that citation issue as provided by law; and that a transcript of the record, proceedings, docu-

ments, and papers upon which said Decree was based, duly authenticated, may be sent up to the said United States Circuit Court of Appeals for the Fifth Circuit, sitting at New Orleans, in the State of Louisiana.

And they further pray that proper orders touching the security to be required to perfect their appeal, be made.

And desiring to supersede the execution of said decree petitioners here tender bond in the amount as the Court may require for such purpose, and pray that with the allowance of their appeal, a supersedeas be issued.

BLANCHARD GOLDSTEIN & WALKER,
Solicitors for Jeems Bayou Fishing and Hunting Club.

HAMPDEN STORY,
Solicitor for Producers Oil Company, and The Texas Company.

ORDER.

The petition is granted, and the appeal is allowed, and shall operate as a supersedeas, upon petitioners filing a bond in the sum of Two Hundred and Seventy Thousand and no/100 Dollars ($270,000.00), with sufficient surety, conditioned as required by law.

Sept. 3rd, 1919.

RUFUS E. FOSTER,
Judge.

559 Indorsed: Filed Sept. 25th, 1919.

560 United States District Court for the Western District of Louisiana. Shreveport Division.

United States of America,
Plaintiff.
vs. No. 1157 In Equity.
Jeems Bayou Fishing and Hunting Club, Producers Oil Company and the Texas Company.
Defendants.

Now comes Jeems Bayou Fishing and Hunting Club, Producers Oil Company, and The Texas Company, being all of the defendants in the above cause, by their respective solicitors, Blanchard, Goldstein and Walker, and Hampden Story, and say that the decree entered in the above cause on the 4th day of August, 1919, is erroneous, unjust and prejudicial to defendants, and in connection with their petition for an appeal, and for specifications and assignment of errors, show:

1.

That the Court erred in holding that the property in controversy is public land or property of the United States.

II.

That it was error in the Court in holding that the property in controversy, and other lands, lying between the meander line of the survey of A. W. Warren, United States Deputy Surveyor, and Ferry Lake, is not a part of the Fractional Southwest Quarter (Frl SW ¼) of Section Ten (10), in Township Twenty (20) North of Range Sixteen (16) West of Louisiana Meridian, patented by the United States to Stephen D. Pitts, on April 2nd, 1860,

on the approved official survey, field notes, and plat of said A. W. Warren, United States Deputy Surveyor, made in 1839, and on file in the General Land Office of the United States.

III.

That the Court erred in holding that the meander line run by A. W. Warren, United States Deputy Surveyor, is a line of boundary to said Fractional Southwest Quarter (Frl SW ¼) of Section Ten (10), Township Twenty (20) North of Range Sixteen (16) West of Louisiana Meridian.

IV.

That the Court erred in holding that the Fractional Southwest Quarter (Frl SW ¼) of Section Ten
561 (10) in Township Twenty (20) North of Range Sixteen (16) West of Louisiana Meridian does not extend to Ferry Lake as a boundary, as shown by the approved official plat of survey by A. W. Warren, United States Deputy Surveyor.

V.

That the Court erred in receiving in evidence the survey of A. D. Kidder, United States Supervisor of Surveys, made in 1912 and 1913, and extension surveys, and the testimony of the said A. D. Kidder and Lester L. Clements, L. Z. Crawford, Henry C. Cowles, Frank Leverett, and other witnesses, to impeach the correctness and verity of A. W. Warren's survey of 1839, on the ground of fraud, mistake and gross error, inasmuch as, and for the reason that the plaintiff had not alleged or pleaded fraud, mistake or gross error.

VI.

That the Court erred in overruling the objection to the admissibility of the evidence and of the testimony of the witnesses named in the foregoing assignment, which objections are as follows, to-wit:

a. Because of its incompetency, irrelevancy and immateriality.

b. On the further ground that the said survey, so made, was beyond the authority, control and jurisdiction of said Secretary of the Interior, in this, that the lands described as Lots Eight, Nine, and Ten of Section Ten, Township Twenty North Range Sixteen West were not included and embraced in the Executive Orders of withdrawal dated December 15, 1908, and July, 2, 1910, respectively.

c. On the further ground that the said survey purports to be a corrective re-survey of Section Ten, Township Twenty North Range Sixteen West, embracing lands, as alleged and described in the bill of complaint, as Lots Eight, Nine, and Ten, the title to which was not in the United States at the time of said survey, but was, and is now, in private ownership, having passed by patent of the United States to S. D. Pitts, according to the
562 official survey, field notes, and plat of A. W. Warren, United States Deputy Surveyor, in 1839, and approved by the Commissioner of the General Land Office on August 31, 1839, and from Pitts passing through mesne conveyances to the Jeems Bayou Fishing and Hunting Club, one of the defendants herein.

d. On the ground that said survey of March 28, 1917, being made subsequent to the official survey of A. W.

Warren, United States Deputy Surveyor, 1839, and of the time of the issuance thereon of patent to the Fractional Southwest Quarter of Section Ten, Township Twenty North Range Sixteen West, that the plat of survey of Warren showing that the fractional quarter of said section borders on Ferry Lake, or Jeems Bayou, and for which said reason the surveys of 1913-14, March 28, 1917, is inadmissible to show that title to any lands lying between the fractional quarter section and the waters of Jeems Bayou, or Ferry Lake, remains or is in the United States, and, further, that said survey, if admitted, would, in effect deprive S. D. Pitts and his assigns of the land lying between the meander of said fractional quarter section and Jeems Bayou, or Ferry Lake, acquired and vested under said patent, bottomed on the approved official survey of A. W. Warren, United States Deputy Surveyor.

e. On the further ground that the said surveys of 1913-14 and of March 28, 1917, made subsequent to such date, are incompetent to impair, contradict, reconstruct, explain and impeach the verity of A. W. Warren's official survey, field notes and plat, or of the patent, to which the same had been issued to S. D. Pitts, and to affect, abridge, or deny the exercise and enjoyment of the access and approach to the water of said Jeems Bayou, or Ferry Lake, or any riparian rights accorded to said property bordering on said Ferry Lake under the laws of the State of Louisiana.

f. On the further ground, that the said purported corrective survey, or re-survey, is inadmissible, for the reason that if admitted and given effect, it would deprive, abridge and deny to said S. D. Pitts and his assigns, without due process of law, all of his rights, title and interest, rights of property, and privileges in said lands lying be-

563 tween the meander of said quarter section and Ferry Lake, acquired and vested by the patent issued by the United States in 1860, bottomed upon the approved official survey, field notes and plat of A. W. Warren, United States Deputy Surveyor, approved by the Commissioner of the General Land Office, in contravention to, and in violation of the Fifth Amendment of the Constitution of the United States, and would, further abridge, deprive and deny to the said S. D. Pitts, and his assigns, without due process of law, all of his, or their rights, title and interest, rights of property and privileges to the access to the waters of said Jeems Bayou, or Ferry Lake, accorded by the laws of the State of Louisiana, in violation of and in contravention to the Fourteenth Amendment of the Constitution of the United States.

g. That the said surveys of 1913-14 and March 28, 1917, and all such notes are incompetent to show error, omission or fraud in the survey of A. W. Warren, United States Deputy Surveyor, made in 1839, and of the Bristol survey of 1871, if any, for the reason, that said error, omissions or fraud cannot affect bona fide and innocent purchasers who have acquired the said Fractional Southwest Quarter of Section Ten, Township Twenty North, Range Sixteen West, on the faith of the correctness of said official survey of A. W. Warren, on which the patent was issued; and, further, that no proof of omission, error or fraud is admissible as such is not specifically alleged in the pleadings or in the bill of complaint.

VII.

That the Court erred in holding that there were any facts or circumstances shown in the evidence, disclosing any intention to limit the Fractional Southwest Quarter

(Frl SW ¼) of section Ten (10) of Township Twenty (20) North Range Sixteen (16) West of Louisiana Meridian to the actual traverse lines or to cause such results to follow the survey.

VIII.

That the Court erred in not sustaining the plea of estoppel of the defendants against the plaintiff, to recover herein, as shown by letter of S. Whendall, Commissioner of the United States Land Department to Honorable N. C. Blanchard of date February 8, 1897, and letter of George Otis Smith, Director, dated November
564 6th, 1908, to the Honorable, the Secretary of the Interior, wherein it was stated that there was no public lands belonging to the United States, in said Section Ten (10) of Township Twenty (20) North of Range Sixteen (16) West of Louisiana Meridian.

IX.

That the Court erred in allowing interest from January 1st, 1918, on the amount claimed to be due to the plaintiff for the value of oil taken from the premises in controversy, instead of from the date of the signing of the decree.

Wherefore, defendants pray that the said decree entered by the United States District Court for the Western District of Louisiana, be reversed.

BLANCHARD, GOLDSTEIN & WALKER,
Solicitors for Jeems Bayou Fishing Hunting Club.

HAMPDEN STORY,
Solicitor for Producers Oil Company, and The Texas Company.

Indorsed:—Assignment of Errors. Filed Sept. 25th, 1919.

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565 SUPERSEDEAS BOND ON APPEAL.

United States District Court for the Western District of Louisiana. Shreveport Division.

United States of America, Plaintiff,
vs. No. 1157 In Equity.
Jeems Bayou Fishing and Hunting Club, Producers Oil Company, and The Texas Company, Defendants.

Know all men by these presents: that we, Jeems Bayou Fishing and Hunting Club, Producers Oil Company, and The Texas Company, as principal, and United States Fidelity & Guaranty Company of Baltimore, Maryland, as surety, are held and firmly bound unto and in favor of the United States of America, appellee in the above numbered and entitled cause, in the full sum of Two Hundred and Seventy Thousand and no/100 Dollars ($270,000.00), for the payment of which well and truly to be made, we hereby bind ourselves, our successors and legal representatives firmly and in solido.

Dated at Shreveport, Louisiana, on this the .... day of August, A. D. 1919.

The condition of the above obligation is such that,

Whereas, on the 4th day of August, 1919, in the District Court of the United States, for the Western District of Louisiana, in a suit pending in that Court, wherein the United States of America was plaintiff and Jeems Bayou Fishing and Hunting Club, Producers Oil Company, and

The Texas Company were defendants, numbered on the Equity Docket of said Court as 1157, a decree was entered and signed against the said Jeems Bayou Fishing and Hunting Club, Producers Oil Company, and The Texas Company; and

Whereas, the said Jeems Bayou Fishing and Hunting Club, Producers Oil Company, and The Texas Company having obtained an appeal with supersedeas, to the United States Circuit Court of Appeals for the Fifth Circuit;

Now, therefore, if the said Jeems Bayou Fishing and Hunting Club, said Producers Oil Company, and said The Texas Company shall prosecute such appeal to
566 effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; otherwise to remain in full force and effect.

JEEMS BAYOU FISHING AND HUNTING CLUB,
By ELIAS GOLDSTEIN.
THE TEXAS COMPANY,
By HAMPDEN STORY, Atty. at Law.
PRODUCERS OIL COMPANY,
By HAMPDEN STORY, Atty. at Law.
Principals.
THE UNITED STATES FIDELITY & GUARANTY CO. OF MARYLAND,
By SAM N. WALKER, Attorney in Fact.
Surety.

Approved this 3rd day of Sept., 1919.
RUFUS E. FOSTER, Judge.

Indorsed:—Supersedeas Bond on Appeal. Filed Sept. 25th, 1919.

567 In the District Court of the United States for the Western District of Louisiana. Shreveport Division.

United States of America,

vs. No. 1157, In Equity.

Jeems Bayou Fishing & Hunting Club, et al.

To the Honorable, the Judge of the District Court of the United States, for the Western District of Louisiana:

Now, into this Honorable Court comes the United States of America, plaintiff in the above numbered and entitled cause, and, with respect, represents:

That on August 4, 1919, this Court entered a final decree in said cause, from which the defendants herein have appealed, and that in said decree there was, in part, error greatly to the prejudice and injury of plaintiff, as will more fully appear by the assignment of errors filed herewith. Plaintiff desires to take a cross appeal from said decree to the United States Circuit Court of Appeals for the Fifth Circuit.

Wherefore, it is prayed that a cross appeal may be allowed to plaintiff in this cause from this Court to the United States Circuit Court of Appeals for the Fifth Circuit, and that proper orders for the allowance of such appeal may be made by this Court.

ROBERT A. HUNTER,
Special Assistant to The Attorney General.

568 ORDER.

The foregoing petition for a cross appeal (with assignment of errors attached) being considered:

It is ordered that the United States of America, plaintiff in the above numbered and entitled cause, be and is hereby granted and allowed a cross appeal herein, from this Court to the United States Circuit Court of Appeals for the Fifth Circuit, in accordance with law and with the rules of said United States Circuit Court of Appeals.

Thus done and signed this 10 day of Nov., 1919.

RUFUS E. FOSTER,
United States Judge.

ASSIGNMENT OF ERRORS ON PLAINTIFF'S CROSS APPEAL.

In the District Court of the United States for the Western District of Louisiana, Shreveport Division.

United States of America,

vs. No. 1157, In Equity.

Jeems Bayou Fishing & Hunting Club, et al.

Now comes plaintiff, the United States of America, and in connection with its petition for a cross appeal herein, presents this, its assignment of errors, and says that the decree entered herein August 4, 1919, is erroneous in the following particulars, to-wit:

1.

The Court erred in allowing as an offset against the value of the oil extracted and removed from the land in controversy, the counterclaim of the Producers
569 Oil Company, for costs and expenses incurred in producing said oil, and in not entering a decree in favor of plaintiff for the total value of said oil.

II.

The Court erred in allowing to said defendant, as an offset or counterclaim, the cost of the production of said oil and in not entering a decree in favor of plaintiff for the full value of the oil extracted and removed from the land in controversy, because the said land had been withdrawn from any appropriation whatever by orders of the President of the United States, dated, respectively, December 15, 1908, and July 2, 1910, which orders were issued for the purpose of conserving the public interest and in aid of pending and proposed legislation. The said wells were drilled in violation of each of said orders and in contravention of the policy of the United States to protect the public interest and to retain the oil in the ground for legislative disposition, which fact precludes the consideration of any equitable benefit to the United States from the drilling and operation of said wells.

III.

The Court further erred in deducting from the value of said oil the costs and expenses of production, for the reason that prior to the execution of its lease to the Producers Oil Company, the Jeems Bayou Fishing & Hunting Club knew and had judicially admitted in its litiga-

tion with the Board of Commissioners of the Caddo Levee District that the land in dispute was actually in place as high land in 1839, when the township was surveyed, and because the lease made by the said Jeems Bayou Fishing & Hunting Club to the Producers Oil Company did not embrace or include said land.

IV.

The Court further erred in applying herein the rules relating to a case of innocent trespass, for the reason that there was no evidence whatever to show that the defendants acted in good faith in extracting and re-
570 moving the oil in question.

V.

The Court further erred, in any event, in finding and holding that said defendants were entitled to deduct from the value of the oil extracted from the land in suit the costs of drilling and equipping said well, which said costs of exploration and discovery should not be allowed as an offset, credit or counterclaim herein.

Wherefore, plaintiff prays that the said decree be reversed insofar as it allows the said offset or counterclaim for the cost of drilling, equipping and operating the wells in suit, and that a decree be rendered and entered, in favor of plaintiff herein, for the full value of the oil extracted and removed from the land in controversy, as shown by the report of the Master in Chancery, or, in default of such relief, that the cause be remanded to the District Court with instructions to enter a decree in favor of the plaintiff for the full value of said oil, without offset or deduction of any kind.

Plaintiff further prays that, in any event, the costs of drilling and equipping said well be deducted and excluded from any allowance that may be made to defendants as an offset or counterclaim herein.

Plaintiff further prays that in all other respects the said decree be affirmed.

ROBERT A. HUNTER,
Special Assistant to the Attorney General.

Indorsed:—Plaintiff's Petition for Cross Appeal, Order thereon and Assignment of Errors. Filed Nov. 12, 1919.

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571 (PRAECIPE FOR TRANSCRIPT).

In the District Court of the United States, for the Western District of Louisiana, Shreveport Division.

United States of America,
vs. No. 1157, In Equity.
Jeems Bayou Fishing and Hunting Club, Producers Oil Company, and The Texas Company.

Honorable W. B. Lee, Clerk of
the United States District Court,
Shreveport, Louisiana.

Dear Sir:

You will please prepare the transcript of appeal in the above entitled cause, returnable to the Circuit Court of Appeals of the United States, for the Fifth Circuit, sitting at New Orleans, in the State of Louisiana, and you will include in said transcript the following:

1. Bill of Complaint of the Plaintiff, filed July 19, 1917.

2. Motion to dismiss the bill of complaint filed by all of the defendants, under date of August 9, 1917.

3. Answer of the Jeems Bayou Fishing and Hunting Club, one of the defendants, to the bill of complaint of the plaintiff, filed by the defendant under date of March 18, 1919.

4. Answer of Producers Oil Company, one of the defendants, to the bill of complaint of the plaintiff, filed by said defendant under date of October 22, 1917, but you will not include in said transcript the statements and exhibits attached to said answer.

5. Answer of The Texas Company, one of the defendants, to the bill of complaint of the plaintiff, filed by said defendant under date of October 22, 1917, but you will not include in said transcript the statements and exhibits attached to said answer.

6. Plaintiff's reply to defendant, Producers Oil Company's set off and counter claim, filed by plaintiff under date of October 24, 1917.

7. Order of Court dated March 29, 1918, and filed same day, appointing Hon. E. H. Randolph, Special Master.

8. In full the opinion and recommendations of the Hon. E. H. Randolph, Special Master, filed under date of January 11, 1919.

9. Exception of defendant, Jeems Bayou Fishing and Hunting Club, to the Report of the Special Master, filed by said defendant under date of January 24, 1919.

10. Exception of defendant, Producers Oil Company, to the Report of the Special Master, filed by said defendant under date of January 24, 1919.

11. Exception of defendant, The Texas Company, to the Report of the Special Master, filed by said defendant under date of January 24, 1919.

572 12. Exception of plaintiff, United States of America, to the Report of the Special Master, filed by said plaintiff under date of January 30, 1919.

13. Opinion of the Hon. Rufus E. Foster, Judge, of date July 15, 1919, and filed under date of July 17, 1919.

14. Decree entered by the Hon. Rufus E. Foster, Judge, of date August 4, 1919, and filed under date of August 12, 1919.

15. Defendant's petition for appeal, and order of appeal filed under date of September 25, 1919.

16. Defendants' assignment of errors, filed under date of September 25, 1919.

17. Supersedeas Bond for appeal filed by defendants under date of September 25, 1919.

18. Plaintiff's petition for appeal, and order of appeal, filed under date of September ....., 1919.

19. Plaintiff's assignment of errors, filed under date of September ....., 1919.

20. Defendants' Exhibit No. 25, filed in connection with the testimony of the witness, James W. Neal, under date of January 21, 1919, and being a statement of the production of oil from the land in controversy, and the costs of drilling of wells thereon, and of operating said lands for the production of oil.

21. Patent issued by the United States to Stephen D. Pitts, dated October 1, 1860, conveying the Southwest Fractional quarter of Section 10, in Township 20 North of Range 16 West, Louisiana Meridian, marked Defendants' Exhibit No. 1.

22. Field notes and plat of survey made by A. W. Warren, United States Deputy Surveyor, in 1839, marked defendants' Exhibit No. 2, the same to be sent up in original form as offered in evidence

23. Lease from Jeems Bayou Fishing and Hunting Club to Producers Oil Company, dated October 17, 1910, covering the Southwest quarter of Section 10, Township 20 North Range 16, filed in evidence and marked Defendants' Exhibit No. 16.

24. Letter addressed by the Hon. N. C. Blanchard to the Commissioner General of the Land Office at Washington, D. C., dated February 1, 1897, and marked Defendants' Exhibit No. 17.

25. Letter addressed by S. L. Lameraux, United States Commissioner to Hon. N. C. Blanchard, dated February 8, 1897, and marked Defendants' Exhibit No. 18.

26. Letter of Hon. Geo. Otis Smith to the Secretary of the Interior, dated November 6, 1908, and found at pages

114 to 116 of Bulletin No. 623 of the Department of the Interior on Orders of Withdrawal for Petroleum Reserves, and marked Defendants' Exhibit No. 19.

27. Objection of Counsel for the Plaintiff to the offering of the letter described in item 26 next above, which objection is found at pages 317 and 318 of the Stenographer's transcript of the oral testimony taken on the trial of the above entitled cause.

573 28. Copy of deed from Sallie Pitts Austin and heirs of Stephen D. Pitts to S. N. Kerley, dated May 8th, 1899, conveying the Southwest Quarter of Section Ten (SW¼ Sec. 10) Township Twenty (20) Range Sixteen (16) and Northwest Quarter of Section Twenty Township Twenty, Range Fifteen (NW¼ Sec. 20, T. 20, R. 15) all in Caddo Parish, Louisiana, marked Defendant's Exhibit No. 5.

29. Copy of deed from R. D. Pitts to S. N. Kerley and Jeems Bayou Fishing and Hunting Club, dated March 3rd, 1905, conveying Southwest Quarter of Section Ten (10) Township Twenty (20) Range Sixteen (16) and the Northwest Quarter of Section Twenty (20) Township Twenty (20) Range Fifteen (15) situated in the parish of Caddo, state of Louisiana, and marked Defendants' Exhibit No. 6.

30. Copy of act of ratification of Lucie Pitts Joslyn to S. N. Kerley and Jeems Bayou Fishing and Hunting Club, dated December 21st, 1908, and marked Defendant's Exhibit No. 12.

31. Copy of deed from S. N. Kerley to Jeems Bayou Fishing and Hunting Club, dated April 2, 1910, convey-

ing the Southwest Quarter of Section Ten (10) Township Twenty (20) Range Sixteen (16) and the Northwest Quarter (NW¼) of Section Twenty (20) Township Twenty (20) Range Fifteen (15) West, situated in the parish of Caddo, State of Louisiana, marked Defendants' Exhibit No. 13.

32. Copy of deed from A. C. Pitts to T. H. and A. L. Pitts, dated December 11, 1911, conveying "all my rights, title and interest in and to a suit now pending A. C. Pitts et al vs. Jeems Bayou Fishing and Hunting Club, now in the Supreme Court pending said judgment being adverse to said Pitts, but in case the Supreme Court holds favorable to the said Pitts then all lands recovered by said suit stands transferred as above", marked Defendants' Exhibit No. 14.

33. Copy of agreement of compromise between A. L. Pitts and T. H. Pitts and Jeems Bayou Fishing and Hunting Club, dated April 10, 1912, and marked Defendants' Exhibit No. 15.

34. Copy of letter of date September 27th, 1913, from the Commissioner of the General Land Office to Mr. Arthur D. Kidder, Supervisor of Surveys, marked Plaintiff's Exhibit No. 1.

35. Copy of letter of date December 1st, 1916, from the Commissioner of the General Land Office, approved by the Secretary of the Interior, to Mr. Arthur D. Kidder, Supervisor of Surveys, marked Plaintiff's Exhibit No. 2.

36. Plat of survey of Township 20, North Range 16 West, Louisiana Meridian, made by A. W. Warren, Dep-

uty United States Surveyor, August 31st, 1839, together with the table of contents and notation thereof, marked Plaintiff's Exhibit No. 3.

37. Plat of Survey made by Byron B. Bristol under date of August 18th, 1871, of a portion of Township 20 North Range 16 West, Louisiana Meridian, together with all notations on said plat, marked Plaintiff's Exhibit No. 4.

38. Copy of field notes of the extension, subdivisional and meander lines of Township 20 North Range 16 West Louisiana Meridian, made by Williamson Jones, Deputy United States Surveyor in 1837, by Terrell and
574 Warren in 1839, by A. W. Warren in 1839, by George W. Morse in 1846, by Robert Boyd in 1854, by J. P. Parsons in 1871, and by Byron B. Bristol in 1871, marked Plaintiff's Exhibit No. 5.

39. Index Plat of Township 20 North Range 16 West Louisiana Meridian entitled History of the Original Surveys, certified under date of December 1st, 1916, by Clay Tallman, Commissioner of the United States Land Office, and Ex-officio United States Surveyor General of Louisiana, marked Plaintiff's Exhibit No. 6.

40. Plat dated May 29, 1896, of Township 20 North Range 16 West, Louisiana Meridian showing lot number assigned to certain lands in Section 10 of said township and range, marked Plaintiff's Exhibit No. 7.

41. Copy of Resurvey plat of Township 20 North Range 16 West Louisiana Meridian, together with the memorandum and notations thereon, marked Plaintiff's Exhibit No. 8.

42. Supplemental Plat of Township 20 North Range 16 West Louisiana Meridian, marked "Sheet No. 1", together with notations thereon, said plat having been approved March 28th, 1917, by Clay Tollman, Commissioner General of the Land Office, and Ex-Officio United States Surveyor General of Louisiana, marked Plaintiff's Exhibit No. 9.

43. Supplemental Topographical Plat of Township 20 North Range 16 West, Louisiana Meridian, approved by Clay Tallman, Commissioner, and Ex-Officio United States Surveyor General of Louisiana, on March 28, 1917, together with legend and other notations thereon, marked Plaintiff's Exhibit No. 10.

44. Supplemental Plat of Township 20 North Range 16 West, Louisiana Meridian, with notations and memoranda thereon, marked Plaintiff's Exhibit No. 11.

45. Supplemental Topographical Plat of Township 20 North Range 16 West, Louisiana Meridian, with notations and memoranda thereon, marked Plaintiff's Exhibit No. 12.

46. Hydrographic and Topographic map of a portion of Township 20 North Range 16 West, Louisiana Meridian, together with the legend, memoranda and notations thereon, marked Plaintiff's Exhibit No. 13.

47. Field Notes of the re-establishment of the South, East and Northern boundary of Township 20 North Range 16 West, Louisiana Meridian, known as Book "A" of field notes, marked Plaintiff's Exhibit No. 14.

48. Field notes of the re-establishment of subdivisional and meander lines on Township 20 North Range 16

West, Louisiana Meridian, known as Book "C" of field notes, marked Plaintiff's Exhibit No. 16.

49. Field notes of the upland lying between the erroneous original meander line of Ferry Lake and James Bayou, and the actual mean high water elevation of the land in the year 1912, marked Plaintiff's Exhibit No. 17.

50. Plat filed in the case of Producers Oil Company vs. Lydia Hanzsen, et al., in the District Court for the Parish of Caddo, State of Louisiana, which case was appealed to the Supreme Court of the State of Louisiana and to the Supreme Court of the United States, said plat being attached to the transcript of appeal filed in the Supreme Court of the United States, marked Plaintiff's Exhibit No. 18.

51. Copy of the Louisiana Tract Book, so far as it shows Section 10, Township 20 North, Range 16 West, Louisiana Meridian, made from the Tract Book
575 on file in the General Land Office at Washington, D. C., marked Plaintiff's Exhibit No. 19.

52. Copy of the Tract Book, from the United States Land Office at Baton Rouge, Louisiana, showing said Township 20 North Range 16 West, Louisiana Meridian, marked Plaintiff's Exhibit No. 20.

53. Copy of the Tract Book of the State Land Office at Baton Rouge, Louisiana, showing said Township 20, North Range 16 West, Louisiana Meridian, marked Plaintiff's Exhibit No. 21.

54. Copy of withdrawal order dated December 15th, 1908, marked Plaintiff's Exhibit No. 23.

55. Copy of all of the objections of the defendants to all of the foregoing testimony of the Plaintiff and the ruling of the Special Master in Chancery thereon, found at pages 1 to 4 inclusive of the stenographer's transcript of the oral testimony.

56. Copy in full of all the testimony of all of the witnesses, excepting the testimony of the following witnesses for the defendants: J. W. Cronk, R. J. Daniel, Henry Enders, W. A. Hammann, S. P. Harrell, F. A. Leonard, J. S. Noel, S. D. Pitts, A. C. Pitts and E. B. Rand.

57. Order of Court appointing E. H. Randolph, as Special Master in Chancery.

58. Field notes of the re-establishment of the boundary line between Louisiana and Texas, known as Book "B", Plaintiff's Exhibit 22.

59. Records of the United States Surveyor General's Office, showing the swamp selections in Township 20, North of Range 16 West, Louisiana Meridian, Plaintiff's Exhibit No. 22.

60. Withdrawal Order of July 2, 1910, marked Plaintiff's Exhibit No. 24.

61. General drainage map of Ferry Lake, Red River, and neighboring bayous. Plaintiff's Exhibit No. 25. See Testimony, 47.

62. Topographic Map of Red River at the mouth of Willow Chute, together with map of the route of the Freeman-Curtis Expedition of 1806, showing Red River above

the mouth of Willow Chute, Plaintiff's Exhibit No. 26. See Testimony 47.

63. Account of Red River from the returns to the War Office by Messrs. Freeman & Curtis, who explored same in 1906. Plaintiff's Exhibit No. 27. See Testimony 52.

64. Plat of survey of Township 20 North, Range 16 West, made by Boyd. Plaintiff's Exhibit 29. See Testimony 83.

65. Plat of survey identified by H. E. Barnes and L. Z. Crawford. Plaintiff's Exhibit 30. See Testimony 146.

66. Plat identified by L. L. Clement, Surveyor, Plaintiff's Exhibit No. 31. See Testimony 160.

67. Photographs offered in evidence at pp. 225, 226, Testimony.

68. Samples plat made by K. L. James and identified by him. See Testimony 254.

69. Petition and Supplemental petition and map out of the record of the suit No. 13707 entitled Jeems Bayou Fishing & Hunting Club vs. Board of Commissioners, Caddo Levee District, on the docket of the District
576 Court for Caddo Parish. Defendants' Exhibit No. 24.

70. The Testimony of the following: Angel, W. G.; Ballard, Mrs. A. L.; Barnes, H. E.; Clement, Lester L.; Crawford, L. Z.; Cowles, Dr. Henry C.; Ivey, J. F.; Jones, Lionel L.; Jones, W. J.; Kidder, Arthur D.;

Leverett; Prof. Frank.; Tedder, J. W.; Teat, Vernon; Vaughan, Gus N.; White, Ed.; Neal, J. W.

The testimony of all other witnesses and other documents not mentioned are to be omitted from the transcript.

HAMPDEN STORY,
Solicitor for the Producers Oil Co. and The Texas Company.

BLANCHARD, GOLDSTEIN & WALKER, and
BLANCHARD & SMITH,
Solicitors for Defendant, Jeems Bayou Fishing & Hunting Club.

Indorsed:—Praecipe for Transcript. Filed Sept. 25th, 1919.

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577 United States District Court, for the Western District of Louisiana, Shreveport Division.

United States of America,
vs. No. 1157 In Equity.
Jeems Bayou Fishing and Hunting Club, Producers Oil Company and The Texas Company.

Whereas, there was introduced in evidence on the trial of the above entitled cause, numerous plats, or maps of surveys, photographs and other documents, by the plaintiff and the defendants, respectively, and

Whereas, it would entail great expense and costs to have said plats or maps, photographs, and documents

copied in the record or transcript of appeal, to be filed on an appeal to be taken in said cause; and

Whereas, there was taken in said cause, testimony of witnesses of an expert and technical character, and the same being difficult to reduce in a clear and exact narrative form, as provided by the rules of Equity Practice, so that the Appellate Court may readily understand and appreciate the same, insofar as it bears on the issues in this cause; and

Whereas it is desirable, and it is deemed advisable for the reasons above set forth, that the testimony of witnesses be reproduced in the exact words of said witnesses;

Now, therefore, it is hereby agreed and stipulated by and between Counsel for the plaintiff and the defendants, respectively, with the direction of the Honorable, the Judge of this Court, that all plats, or maps or surveys, photographs, and the account of Red River from the returns to the War Office by Messrs. Freeman and Curtis in 1806, (Plaintiff's Exhibit No. 27), introduced and filed in evidence by the plaintiff and the defendants, or any of them, in the above cause shall be transmitted to the United States Circuit Court of Appeals for the Fifth Circuit, sitting at New Orleans, in the original and shall be deemed and considered a part of the transcript of appeal, and also, that the testimony of witneses taken in said cause, excepting such as may be omitted in the praecipe to the Clerk, shall be reproduced in the exact words of the witnesses in making up said transcript.

578 It is further agreed and stipulated that as to the deeds and conveyances, or instruments introduced in evidence, it will be only necessary to state the

dates of said deeds or conveyances, their nature and object, giving the description of the land, all other matters are to be omitted therefrom.

ROBERT A. HUNTER,
Solicitor for the Plaintiff.

BLANCHARD, GOLDSTEIN & WALKER,
and BLANCHARD & SMITH,
Solicitor for the Defendant, Jeems Bayou Fishing & Hunting Club.

HAMPDEN STORY,
Solicitor for the Defendants, Producers Oil Company, and The Texas Company.

Indorsed:—Agreement of Counsel that Certain Exhibits may be sent up in the Original. Filed Sept. 25th, 1919.

ORDER.

The foregoing stipulations entered into by and between the counsel is allowed, and the Clerk of this Court is accordingly to make up a transcript in the manner agreed upon, and the testimony of witnesses be reproduced in the words of said witnesses.

October 3, 1919.

RUFUS E. FOSTER, Judge.

579 (SUPPLEMENTAL PRAECIPE FOR TRANSCRIPT).

In the District Court of the United States, for the Western District of Louisiana, Shreveport Division.

United States of America,
vs. No. 1157 In Equity.
Jeems Bayou Fishing and Hunting Club, Producers Oil Company, and The Texas Company.

Honorable W. B. Lee, Clerk of
the United States District Court,
Shreveport, Louisiana.

Dear Sir:

Supplementing praecipe heretofore filed in the above numbered and entitled cause, you will further please include in the transcript of appeal in said cause, to be returned to the Circuit Court of Appeals of the Fifth Circuit, sitting at New Orleans, Louisiana, the following:

1. Copy of all documentary evidence offered by the plaintiff on the trial of the pleas filed by defendants in the case of United States vs. Sam. W. Mason, et als., No. 1172, of the docket of this Court.

2. Plat of survey of T. 20 N., R. 16 west, made by A. W. Warren, Deputy U. S. Surveyor, August 31, 1839, with table of contents and notations thereon, and being Plaintiff's Ex. No. 3.

Said plat to be printed and included in the printed transcript of appeal.

3. Plat of Survey by Byron B. Bristol, August 18, 1871, of a portion of T. 20 N., R. 16 W., with all nota-

tions on said plat, being Plaintiff's Ex. 4. Said plat to be printed and included in the printed transcript of appeal.

4. Resurvey plat of T. 20 N., R. 16 West, with notations thereon, being plaintiff's Ex. 8.
Said plat to be printed and included in the printed transcript of appeal.

5. Supplemental Plat of T. 20 N., R. 16 W., approved by the Commissioner of the General Land Office, March 28, 1917, and being plaintiff's Ex. 9. Said plat to be printed and included in the printed transcript of appeal.

6. Supplemental topographic plat of T. 20 N., R. 16 W., approved March 28, 1917, with legends and notations thereon.
Said plat to be printed and included in the printed transcript of appeal.

Respectfully submitted,

HAMPDEN STORY.

I hereby certify that copy of foregoing supplemental praecipe has been this day handed to Mr. Robert A. Hunter, counsel for plaintiff and appellee. 10/6/19.

HAMPDEN STORY.—B.
BLANCHARD, GOLDSTEIN &
WALKER,
Attys. for Dfts.

580 Indorsed:—Supplemental Praecipe for Transcript of Appeal. Filed Oct. 6, 1919.

581 In the District Court of the United States, for the Western District of Louisiana, Shreveport Division.

United States of America,

vs. No. 1157 In Equity.

Jeems Bayou Fishing and Hunting Club, Producers Oil Company, and the Texas Company.

Whereas, in the praecipe filed with the Clerk in the above numbered and entitled cause at paragraph 4 and 5 thereof, the Clerk of this Court is directed not to include in the transcript of appeal the statements and exhibits attached to the answers filed by the Producers Oil Company and The Texas Company, and

Whereas, the statement referred to in said praecipe in paragraph 20 thereof, being defendants' exhibit No. 25, filed in connection with the testimony of the witness, James W. Neal, reflects only the total cost of production, and

Whereas, it is desired to show both the cost of drilling and the cost of operating the wells on the land in controversy herein,

Now, therefore it is agreed by and between counsel for the plaintiff and for the defendants that the statements hereto attached and made a part of this agreement shall be included in said praecipe and in said transcript of appeal in lieu of the exhibits and statements above referred to, and attached to the answers of said Producers Oil Company and said The Texas Company.

Signed this 6th day of October, 1919.

ROBERT A. HUNTER,
Counsel for Plaintiff.

HAMPDEN STORY,
Counsel for the defendants, Producers Oil Company and The Texas Company.

Indorsed:

582 Recapitulation Showing Cost of Drilling By Wells, Jeems Bayou Hunting and Fishing Club Wells Nos. 5 to 11, Inclusive, and Expense of Operating said Wells from the Beginning of Production to Jan. 1st, 1918.

Well No. 5.		
Cost of drilling	$6,099.51	
Cost of operating	10,066.76	$16,166.27
Well No. 6.		
Cost of drilling	5,650.57	
Cost of operating	12,104.16	$17,754.73
Well No. 7.		
Cost of drilling	6,652.07	
Cost of operating	12,235.94	$18,888.01
Well No. 8.		
Cost of drilling	6,149.22	
Cost of operating	12,028.86	$18,178.08

Well No. 9.		
Cost of drilling	6,413.31	
Cost of operating	9,497.14	$15,910.45
Well No. 10.		
Cost of drilling	6,090.05	
Cost of operating	8,931.16	$15,021.21
Well No. 11.		
Cost of drilling	7,513.24	
Cost of operating	4,480.46	$11,993.70
	Total.....	$113,912.45

Indorsed:—Agreement of Counsel in Re: Praecipe for Transcript of Appeal. Filed Oct. 6, 1919.

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583 AGREEMENT OF COUNSEL AS TO PRAECIPE.

It is agreed by and between counsel for plaintiff and defendants that in preparing the transcript of appeal herein, the Clerk of Court shall include therein in full the lease from the Jeems Bayou Fishing & Hunting Club to the Producers Oil Company, dated October 17, 1910, marked defendants' Exhibit No. 16, and the Clerk shall also incorporate in said transcript the minutes of Court showing overruling of motion to dismiss filed by defendants.

It is also agreed that the plat of A. W. Warren's survey annexed to the field notes, marked Defendants' Ex-

hibit 2, which plat was offered by defendants, shall be included and printed in the transcript of appeal.

Thus done and signed at Shreveport, Louisiana, this 6 day of January, 1920.

ROBERT A. HUNTER,
Attorney for Plaintiff.
HAMPDEN STORY,
BLANCHARD, GOLDSTEIN & WALKER,
Attorneys for Defendants.

Filed Jan. 6, 1920.

583½ STIPULATION OF COUNSEL.

In the District Court of the United States for the Western District of Louisiana.

United States of America,
vs. No. 1157.
Jeems Bayou Fishing & Hunting Club, et al.

In the above numbered and entitled cause it is agreed that the Clerk of Court shall incorporate in the transcript of appeal in this cause:

Plaintiff's petition for cross appeal, order of Court thereon and assignment of errors.

Thus done and signed this 5th day of April, 1920.

ROBERT A. HUNTER,
Attorney for Plaintiff.
BLANCHARD, GOLDSTEIN & WALKER,
HAMPDEN STORY,
Attorneys for Defendants.

Indorsed:—Stipulation of Counsel. Filed Apr. 8, 1920.

584 CERTIFICATE.

I, W. B. LEE, Clerk of the United States District Court for the Western District of Louisiana, do hereby certify that the foregoing Five Hundred Eighty-Three pages contain and form a full, true and correct transcript of the record in the cause entitled United States of America, vs. Jeems Bayou Fishing and Hunting Club, et als., No. 1157 on the Equity Docket of said Court, as the original of said record appears on file and of record in this office—this transcript having been prepared in accordance with Praecipe and Supplemental Praecipe and Agreements of Counsel and order of Court, filed in said cause, copies of which accompany this transcript.

Witness my hand and seal of office at the City of Shreveport, Louisiana, on this the 30th day of March, A. D. 1920.

(Seal) W. B. LEE, Clerk.

Citations on Appeal and Cross-Appeal omitted from printed record, being filed in the Originals.

* * * * * * * * *

That thereafter, the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

Argument and Submission.

Extract from the Minutes of March 7th, 1921.

No. 3522.

JEEMS BAYOU FISHING AND HUNTING CLUB et als.

versus

THE UNITED STATES OF AMERICA, etc.

On this day this cause was called, and, after argument by Robert A. Hunter, Esq., Special Assistant to the Attorney General, for appellee and cross-appellant, and Hampden Story, Esq., and Elias Goldstein, Esq., for appellants and cross-appellees, was submitted to the Court.

Petition of Appellants for Leave to File Copy of Judgment of State Court in re Jeems Bayou Fishing & Hunting Club vs. Board of Commissioners of Caddo Levee District.

Filed March 31st, 1921.

United States Circuit Court of Appeals, Fifth Circuit.

No. 3522.

JEEMS BAYOU FISHING AND HUNTING CLUB

vs.

THE UNITED STATES OF AMERICA.

To the Honorable Judges of the United States Circuit Court of Appeals for the Fifth Circuit, Sitting at New Orleans, in the State of Louisiana:

The petition of the Jeems Bayou Fishing and Hunting Club, Producers Oil Company and The Texas Company, Appellants and Cross-Appellees, in the above numbered and entitled cause, are herewith attaching to this petition, and are presenting a certified copy of the judgment rendered in the First Judicial District Court, in and for the parish of Caddo, State of Louisiana, in Suit No. 13707, entitled, "Jeems Bayou Fishing and Hunting Club vs. Board of Commissioners of the Caddo Levee District, the entire record in which suit was offered in evidence on the trial of the above numbered and entitled cause, and which said judgment, through inadvertence, does not ap-

pear to have been included in the præcipe, and was omitted from the printed transcript of the record in this cause, filed in this court.

Your petitioners desire the permission of the Court to file this judgment at this time, for the information of the Court.

Wherefore, petitioners pray that an order be entered, permitting them to file a certified copy of said judgment, hereinabove referred to, and attached to their reply and supplemental brief, filed in said cause.

(Signed) HAMPDEN STORY,
Solicitor for Producers Oil Company and The Texas Company.

(Signed) H. C. WALKER, Jr.,
(Signed) ELIAS GOLDSTEIN,
Solicitors for Jeems Bayou Fishing and Hunting Club.

A copy of the annexed judgment was handed to me by opposing counsel this March 28, 1921.

(Signed) ROBERT A. HUNTER,
Special Asst. to the Attorney General.

I certify that as counsel for one of the defendants in above cause I served a copy of petition and copy of judgment on opposing counsel as shown by his acceptance.

(Signed) HAMPDEN STORY.

Mch. 28/21.

Order Allowing Appellants Leave to File Copy of Judgment.

Extract from the Minutes of April 5th, 1921.

No. 3522.

JEEMS BAYOU HUNTING & FISHING CLUB et als.

versus

THE UNITED STATES OF AMERICA.

On consideration of the petition of appellants and cross-appellees it is ordered that they be permitted to file herein a certified copy of the judgment rendered in the First Judicial District Court in and for the Parish of Caddo, State of Louisiana, in suit No. 13707, entitled "Jeems Bayou Fishing & Hunting Club versus Board of Commissioners of the Caddo Levee District."

Copy of Judgment of State Court.

Filed April 5th, 1921.

No. 13707.

In the District Court, Caddo Parish, La.

JEEMS BAYOU FISHING AND HUNTING CLUB

vs.

BOARD OF COMMISSIONERS OF THE CADDO LEVEE DISTRICT.

In the above entitled and numbered cause, the law and the evidence being in favor of the Jeems Bayou Fishing and Hunting Club, plaintiff, and against the Board of Commissioners of the Caddo Levee District, defendant, it is ordered, adjudged and decreed that said plaintiff be and is hereby recognized as owner and in possession as such of the whole of the Southwest (S. W.) fractional quarter (¼) of Section Ten (10), Township Twenty (20) North, Range Sixteen (16) West, Parish of Caddo, Louisiana, the lines of said fractional quarter Section, on the side or sides that the same border upon Ferry or Caddo Lake, to extend to the mean high water mark of the Lake, as shown by lines traced in yellow on the map made by Crawford and Barnes, surveyors appointed by the court, which map is filed in the record of this cause and is, by reference, made part of this judgment, said map showing, within the yellow lines aforesaid, one hundred and forty-two and 88/100 (142.88) acres as constituting said fractional quarter section, and this acreage is hereby adopted as constituting the Southwest (S. W.) fractional quarter (¼) of said Section Ten (10), Township Twenty (20) North, Range Sixteen (16) West, and is made a part of this judgment.

It is further ordered, etc., that there be judgment in favor of said plaintiff and against said defendant disallowing the claim set up by said defendant to the land or any part of same included within said yellow lines on the map aforesaid, and rejecting its demand to be decreed the owner of any part of said fractional quarter section as herein described, and condemning said defendant to cease its slander of the plaintiff's title as herein sustained, and to cease its disturbance of plaintiff's possession of the fractional quarter section aforesaid as herein awarded said plaintiff, and that defendant pay all costs.

Thus done, read and signed in open court on this the 8th day of March, A. D. 1911.

(Sgd.) E. W. SUTHERLIN,
District Judge.

United States District Court, Western District of Louisiana.

I, W. B. Lee, Clerk of the United States District Court for the Western District of Louisiana, do hereby certify that the foregoing

one page constitutes a true and correct copy of the Judgment in Suit No. 13707 Jeems Bayou Fishing and Hunting Club vs. Board of Commissioners of the Caddo Levee District in the First Judicial District Court, Parish of Caddo, State of Louisiana; the entire record of said suit being filed in evidence in this Court in the cause entitled United States of America versus Jeems Bayou Fishing and Hunting Club, No. 1157 in Equity.

Witness my official hand and the seal of this Court in the City of Shreveport, Louisiana, on this 10th day of March, A. D. 1921.

[SEAL.] (Signed) W. B. LEE,
Clerk U. S. Dist. Court, West. Dist. of Louisiana.

Opinion of the Court.

Filed June 10th, 1921.

In the United States Circuit Court of Appeals, Fifth Circuit.

No. 3522.

JEEMS BAYOU HUNTING AND FISHING CLUB et als., Appellants and Cross-Appellees,

vs.

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Appeal and Cross-appeal from the District Court of the United States for the Western District of Louisiana.

N. C. Blanchard, Elias Goldstein and Hampden Story (Hampden Story, H. C. Walker, Jr., and Elias Goldstein on the brief), for Appellants and Cross-Appellees.

Robert A. Hunter, Special Assistant to the Attorney General, for Appellee and Cross-Appellant.

Before Walker, Bryan, and King, Circuit Judges.

WALKER, *Circuit Judge:*

By the bill in equity in this case the United States, claiming to be the owner of land now known and described as Lots 8, 9 and 10, in township 20 North of Range 16 West, situated in the Parish of Caddo, Louisiana, containing 85.22 acres, as shown by a plat of survey approved March 28, 1917, by the Commissioner of the General Land Office, sought relief which included the following: an adjudication that the above described land is the property of the plaintiff, free and clear of all claims of the defendants to the suit, and that the possession of said land be restored to the plaintiff; that the defendants be enjoined from setting up any claim to said land, or to any oil, gas or other minerals on or under the same; an accounting by the defendants for oil and gas removed or extracted from said land,

and for all moneys derived from the sale or disposition of the same, and for all rents, royalties and proceeds arising from the sale or lease of the same; and for the recovery from the defendants of all such sums so received by them. The defendants were three corporations, namely, the Jeems Bayou Fishing and Hunting Club, the Producers Oil Company, and The Texas Company. The bill contained averments to the effect that the Producers Oil Company, acting under a pretended lease made to it by the Jeems Bayou Fishing and Hunting Club, wrongfully entered upon said land and took therefrom a large quantity of oil and gas, which it sold to the Texas Company, and that it paid as a royalty part of the value of such oil and gas to the Jeems Bayou Fishing and Hunting Club. The plaintiff's assertion of right to the relief sought was resisted on the ground that title to said land was acquired by Stephen D. Pitts by a patent issued to him on October 1, 1860, for the "Southwest fractional quarter of Section ten, in Township Twenty, of Range Sixteen, West, in the District of Lands subject to sale at Natchitoches, Louisiana, containing Twenty-three acres, according to the official plat of the survey of the said lands, returned to the General Land Office by the Surveyor General," and that that title thereafter was duly acquired by the Jeems Bayou Fishing and Hunting Club, which leased said land to the Producers Oil Company. By the court's decree the first above mentioned land was adjudged to be the property of the plaintiff, the Producers Oil Company and The Texas Company were adjudged in solido to pay to the plaintiff the ascertained value of oil taken from said land, less the ascertained cost of producing it, and less the amount paid as royalty to the Jeems Bayou Fishing and Hunting Club; the three defendants were adjudged in solido to pay the ascertained amount paid as royalty to the Jeems Bayou Fishing and Hunting Club; and interest from the date of the Master's report, which was confirmed, was allowed on the amounts adjudged to be paid to the plaintiff. The defendants appealed from the decree and complain of it so far as it was adverse to them. The plaintiff sued out a cross-appeal, and complains of the part of the decree which credited the defendants, or any of them, with the amount of the cost of producing oil from the land. The respective parties are referred to herein as plaintiff and defendants.

The official plat of survey which was referred to in the above mentioned patent issued to Stephen D. Pitts was one of the township mentioned made in 1839 by A. W. Warren, Deputy Surveyor, which was filed in the General Land Office after being approved in writing on August 31, 1839, by H. T. Williams, Surveyor General. A large part of the space included within the exterior lines of said township 20 is covered by a body of water which was designated on the Warren plat as Ferry Lake. According to that plat the only land in the southwest part of section 10 of that township is a narrow peninsula, bounded on most of its eastern side and on all of its southeastern, southern, southwestern and western sides by Ferry Lake,—the plat also showing that the shore line of the land in the township north of the southwest fractional quarter of section 10 is an irregular one running generally a little west of north from the point at which the east

and west line running through the center of section 10 ends at the lake shore a short distance west of the center of that section. That plat does not indicate even approximately the actual location of Ferry Lake with reference to the land included within the traverse line, being the broken line of different courses and distances, shown by Warren's survey to have been run by him around the land designated on his survey and plat as the southwest fractional quarter of section 10. Evidence adduced proved that there is a compact body of high land comprising 528.99 acres lying between the actual shore line of Ferry Lake and the line which Warren's plat indicates is the shore line of lands in sections 10 and 3; that omitted land being south, southwest and west of Warren's traverse line extending northwardly from its southernmost point in fractional southwest quarter of section 10 to the northern boundary of the township. Southeast, south and southwest of the land included within the traverse line run by Warren around the tract in the southwest fractional quarter of section 10 surveyed by him is a considerable body of high land, part of which by a proper survey would have been included in that fractional subdivision, and the remainder of which lies south of the line between sections 10 and 15, which line, in consequence of Warren's error as to the location of the margin of Ferry Lake, was not run by him at all. The average distance in a westerly direction of Ferry Lake or James or Jeems Bayou, as that part of the body of water in the township is now called, from Warren's traverse line along the western side of the above mentioned peninsular shaped tract surveyed by him is considerably more than 2,500 feet, the distance from a number of points on that line being over 3,000 feet. Portions of the above mentioned lands which were omitted from the survey made by Warren were surveyed prior to 1913 under orders of the Commissioner of the General Land Office. In September, 1913, that official directed Arthur D. Kidder, Supervisor of Surveys, to make a resurvey of the township for the purpose of determining whether Ferry Lake was a navigable body of water in 1812, when Louisiana was admitted as a State, and whether Warren's survey correctly meandered the lake as it existed at the time of Louisiana's admission. That resurvey was completed in May, 1914, and the result was shown by hydrographic and topographic plats and by a resurvey map, accompanied by field notes, all of which were approved by the Commissioner of the General Land Office. The resurvey plat mentioned showed land, including that involved in this suit, lying between Warren's traverse lines and the mean high water mark of Ferry Lake as it existed in 1812 and 1839. On December 1st, 1916, the Commissioner of the General Land Office ordered Mr. Kidder to survey the uplands which the above mentioned resurvey disclosed as existing between Warren's traverse lines and the mean high water line of the lake. The survey was made as ordered and is represented by an official plat approved by the Commissioner of the General Land Office on March 28, 1917. The last mentioned survey included the lands involved in this suit, the three subdivisions called in that survey Lots 8, 9, and 10 of Section 10, Township 20, etc., (those three lots containing in the aggregate 85.22 acres), being

most of the land in the southwest portion of that section which was omitted from the Warren survey. Warren's survey and plat do not show any land in section 9, which adjoins section 10 on the west, in section 15, which adjoins section 10 on the south, or in section 16, which adjoins section 9 on the south. That plat makes no mention of sections or fractional sections numbered 9, 15 and 16. So far as is disclosed, Warren ran no line which is a boundary of any of the three last mentioned sections. Evidence adduced abundantly supported findings that the lands in section 10 outside of the lines run therein by Warren, and the lands in sections 9, 15 and 16, which were disclosed and descried by the Kidder survey and plat, were high lands in place, and above the mean high water level of Ferry Lake, in 1812 and 1839. By the lines and distances set forth in Warren's survey there are 48 acres in the sub-division granted by the aove mentioned patent to Pitts, being more than twice as much land as that instrument shows the patentee paid for.

The defendants, in support of their claim to the land in question and to oil taken therefrom, invoke the rule that where a patent granting public land refers to a plat for identification of the land granted, and the plat so referred to shows that such land is bounded by a lake or other body of water, the surveyed line along what the plat indicates is the border of such water is treated as a meander line, with the result that the water, and not such meander line, is the boundary of the land granted. Warren's survey and plat on their face indicate that the traverse line run by him around the peninsular shaped tract in the southwest quarter of section 10 was a meander line of the border of Ferry Lake. Evidence other than that furnished by such survey and plat demonstrated that that part of the traverse line mentioned which ran along the southeastern, southern, southwestern and western sides of the peninsular shaped tract was run without any regard whatsoever to the location of that tract with reference to Ferry Lake. Warren's plat was wholly false as a representation or indication of a state of fact in so far as it was capable of being used as a basis for an inference that the just mentioned part of his traverse line around the peninsular shaped tract was a meander line run along or near the margin of Ferry Lake. The opinion in the case of Mitchell v. Smale, 140 U. S. 407, after stating the rule invoked and applying it with the result of recognizing that a patentee of a subdivision of land which a plat referred to in the patent showed was bounded by a lake was entitled to a tongue of land extending out into the lake beyond the surveyed line which the plat indicated was a meander line of the margin of the lake, contained the following statement:

"We do not mean to say that, in running a pretended meander line, the surveyor may not make a plain and obvious mistake, or be guilty of a palpable fraud; in which case the Government would have the right to recall the survey, and have it corrected by the courts, or in some other way. Cases have happened in which, by mistake, the meander line described by a surveyor in the field notes of his survey did not approach the water line intended to be portrayed. Such mistakes of course do not bind the Government.

It is well settled that where public land was improperly omitted from a survey in consequence of the surveyor, influenced by such a mistake or fraud, treating as under water what at the time of his survey actually was high land within the limits of the area which was the subject of his survey, the Land Department, upon discovering the error, has power to deal with the land so improperly omitted, to cause it to be surveyed and lawfully to dispose of it. Lee Wilson & Co., v. United States, 245 U. S. 24. The existence and exercise of such power are not inconsistent with the rights of one who acquired a subdivision of land included in such survey under a patent containing a reference to the surveyor's plat which falsely indicated that the land patented, along the whole or part of the line surveyed around it, bordered on a body of water, when in fact that line was remote from any body of water. The well established fact that when Warren's survey was made there was, as there is now, between the western surveyed line of the peninsular shaped tract and the margin or Ferry Lake, a strip of high land nearly half a mile wide in its narrowest part requires the conclusion that the making and return of that part of Warren's plat which had the effect of representing that that western line disclosed the location on that side of the tract of the margin of Ferry Lake were due to either gross error or fraud on the part of the surveyor. A result of the omission from the survey of the large compact body of land containing over 500 acres, of which the just mentioned strip is a part, was that there was, as to a material part of the land in the township, a failure to comply with requirements of law governing the survey ordered to be made, in that section lines were not run and section corners were not established and marked in the omitted area and none of the land therein was surveyed or assigned to its appropriate subdivision. R. S. §§2395, 2396; Brown's Lessee v. Clements, 3 How. 650.

Controlling authorities fully support the propositions that on the state of facts disclosed by the evidence in this case the above mentioned patent to Pitts confers on those claiming under it no right or title to land not included in the surveyed lines and distances of the subdivision patented, which in fact contained more than twice the number of acres stated in the patent, and that there is no merit in their claim to land outside such surveyed lines, based upon the false representation of the plat referred to that the land patented bordered on Ferry Lake. Security Land & Exploration Co., v. Burns, 193 U. S. 167; 87 Minn. 97; 94 Am. St. Rep. 684; French Lick Live Stock Co., v. Springer, 185 U. S. 47; Howe v. Smith, 159 U. S. 40. The following was said in the opinion of the Supreme Court of the United States in the first cited case on the subject of a surveyed line being a boundary, though a plat referred to indicated that it was run along or near the margin of a body of water, part of the statement being a quotation from the opinion of the Supreme Court of Minnesota in the same case:

"Upon this subject it was well said by the State Supreme Court in this case as follows: 'The official plat was only intended to be a picture of the actual conditions on the ground; but the fraudulent mistake in the plat in this case was so gross that no man actually view-

ing the premises could possibly be misled, or believe that the shore line of the lake was intended as the boundary line of the lots. He would understand at once that the meander line as traced on the plat was the actual boundary line of the lots. This case, then, is one where the call for the natural monument, the lake, must be disregarded; for the admited facts show that it is an impossible call. * * * It falls within the rule that a meander line is not, as a general proposition, a boundary line; yet the boundaries of fractional lots will not be indefinitely extended where they appear by the Government plat to abut on a body of water which in fact has never existed at substantially the place indicated on the plat. In such exceptional cases, the supposed meander line will, if consistent with the other calls and distances indicated on the plat, mark the limits of the survey, and be held to be the boundary line of the land it delimits.' That this was a fraudulent survey cannot be denied. Still the Government is concluded by such survey, so far as the lands actually described, granted and paid for are concerned, but it will not be concluded in regard to other lands, which were not within the lines of the survey, and which are only claimed because of the alleged existence of a lake or body of water bounding said lots, when such lake or body of water is in fact and always has been more than half a mile away from such lots, and where the patentee has received all the land he actually paid for."

We do not think that under the circumstances disclosed the defendants are liable as wilful trespassers for the taking of oil from the land in question. It was in 1910 that one of the defendants, the Jeems Bayou Fishing and Hunting Club, made the lease to another defendant, the Producers Oil Company, of land described as the fractional southwest quarter of section 10, etc., for the purpose of drilling wells and exploring for oil, gas, etc. At the time that lease was made, and for many years prior to that time, the land now in question had been treated as having been acquired by Pitts under the patent issued to him. During that time there was no assertion by the Government of a claim that that land remained a part of the public domain. It was not disclosed that when the lease was made, or when the lessee drilled wells on the land and took oil therefrom, either the lessor or the lessee realized that the land in question belonged to the United States. It was not made to appear that when those things were done either the lessor or the lessee was aware of the state of facts having the effect of making the surveyed line around the above mentioned peninsular shaped tract the boundary of the subdivision granted by the patent which was the source of their title. If the original survey of the township had been made in pursuance of the requirements of law both the land in question and that within the lines run by Warren around the peninsular shaped tract would have been included in a subdivision properly called the fractional southwest quarter of section 10, etc. It was after the lessee had drilled oil producing wells on the land in question that the exhaustive investigation was made at the instance of the Commissioner

of the General Land Office which resulted in disclosing the existence of such a state of facts at the time Warren made his survey as required the conclusion that his surveyed line around the above mentioned peninsular shaped tract shown on his plat was the boundary of the subdivision patented to Pitts. The evidence adduced was consistent with the conclusions that the drilling of wells on the land in question and the taking oil therefrom were unaccompanied by any intention on the part of the defendants, or either of them, to violate any law or to do any wrongful act, and that the defendants acted under a mistake of fact as to the location of the boundary of the land described in the lease, and without knowledge of the facts which require the conclusion that title to the land in question has not passed out of the United States. On the facts disclosed the court properly ruled that the measure of liability for the oil taken from the land in question was the value of that oil, less the cost of producing it. United States v. St. Anthony R. Co., 192 U. S. 524.

The decree under review is affirmed.

(Original filed June 10th, 1921.)

Judgment.

Extract from the Minutes of June 10th, 1921.

No. 3522.

JEEMS BAYOU FISHING AND HUNTING CLUB et als.

versus

THE UNITED STATES OF AMERICA, etc.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Louisiana, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause, be, and the same is hereby, affirmed.

Petition for Appeal and Order Allowing Same.

Filed July 1, 1921.

In the United States Circuit Court of Appeals, Fifth Circuit.

In Equity.

No. 3522.

JEEMS BAYOU FISHING AND HUNTING CLUB et al., Appellants and Cross-Appellees,

vs.

UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

To the Honorable Judges of the United States Circuit Court of Appeals, Fifth Circuit:

The above appellants and cross-appellees, conceiving themselves aggrieved by the decree made and entered in said cause, on the 10th day of June, 1921, whereby the Court has affirmed the decree of the United States District Court for the Western District of Louisiana, sitting at Shreveport, decreeing that the Appellee and Cross-Appellant is the owner of the land in controversy, do hereby appeal from said decree to the Supreme Court of the United States of America, for the reasons specified in the assignment of errors, which is herewith annexed and made a part hereof; and they pray that their appeal be allowed with supersedeas, and that citation issue as provided by law, and that transcript of the record, proceedings, documents and papers upon which said decree was based, duly authenticated, may be sent to the Supreme Court of the United States of America.

And further, your petitioners pray that proper orders, touching the security to be required to perfect their appeal, be made; and desiring to supersede the execution of said decree, the petitioners here tender bond in such amount as the Court may require for said purpose, and pray that with the allowance of their appeal, a supersedeas be issued.

(Signed) N. C. BLANCHARD,
H. C. WALKER, JR.,
ELIAS GOLDSTEIN,
Solicitors for Jeems Bayou Fishing & Hunting Club.

(Signed) HAMPDEN STORY,
Solicitor for Producers Oil Company and The Texas Company.

Order.

The petition is granted, and the appeal is allowed, and shall operate as supersedeas upon petitioners filing a bond in the sum of Two

Hundred and Eighty Thousand ($280,000.00) Dollars, with sufficient security, conditioned as required by law.

Dated 24th day of June, 1921.

(Signed) R. W. WALKER,
Judge of the United States Circuit Court of Appeals, Fifth Circuit.

Assignment of Errors.

Filed July 1st, 1921.

United States Circuit Court of Appeals, Fifth Circuit.

In Equity.

No. 3522.

JEEMS BAYOU FISHING AND HUNTING CLUB, PRODUCERS OIL COMPANY, and THE TEXAS COMPANY, Appellants and Cross-Appellees,

v.

UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

And now come all of said appellants and cross appellees (defendants in the District Court), and say that the opinion and decree filed herein on the 10th day of June, 1921, is erroneous and is unjust to them; and, for specification assignment of such errors, they show:

First.

That the Court erred in holding that the property, in controversy, is public land, or the property of the United States, instead of holding and deciding that the lands, in controversy, were the property of S. D. Pitts, held by him under patent from the United States of America, dated April 2, 1860, according to the official plat of survey of A. W. Warren, made in 1839, approved and filed in the General Land Office of the United States.

Second.

That it was error in the court in holding that the property in controversy, and other lands lying between the meander lines of the official plat of survey of A. W. Warren, United States Deputy Surveyor, and Ferry Lake, is not a part of the Fractional Southwest quarter of Section ten (10), Township twenty (20) North, Range sixteen (16) West, Louisiana Meridian, patented by the United States to Stephen D. Pitts, April 2, 1860, on the approved official field notes and plat of survey of A. W. Warren, United States Deputy Surveyor, made in 1839, approved in writing, August 31, 1839, by H. T. Williams, Surveyor General, and filed in the General Land Office of the United States.

Third.

That the Court erred in holding and deciding that the meander line run by A. W. Warren, United States Deputy Surveyor, is a line of boundary of said Fractional Southwest quarter of Section ten (10), Township twenty (20) North, Range sixteen (16) West, Louisiana Meridian, instead of holding and deciding that the said Fractional Southwest quarter of Section ten (10), Township twenty (20) North, Range sixteen (16) West, Louisiana Meridian, extended to and abutted on Ferry Lake as a true and real call for boundary, as shown and demonstrated by the official plat of survey of A. W. Warren, United States Deputy Surveyor.

Fourth.

That the Court erred in considering the survey of A. D. Kidder, United States Supervisor of Surveys, offered in evidence by the appellee, over the objection of counsel, and likewise, the testimony of the said A. D. Kidder, Lester L. Clements, L. Z. Crawford, Henry C. Cowles, Frank Leverett, and other witnesses, to impeach the correctness, verity and authenticity of A. W. Warren's survey of 1839, on the ground of fraud, mistake and gross error, inasmuch as, and for the reason, that the appellee and cross-appellant did not allege or plead fraud or mistake, or gross error.

Fifth.

That the court erred in not considering and sustaining the objections of appellants and cross-appellees to the admissibility of the A. D. Kidder survey of 1913-1914, and of March 28, 1917, in evidence and of the testimony of the witnesses named in the foregoing assignment of errors, which objections are as follows, to-wit:

a. Because of its incompetency, irrelevancy and immateriality.

b. On the further ground that the said survey of the said A. D. Kidder, United States Supervisor of Surveys, so made, was beyond the authority, control and jurisdiction of the Secretary of the Interior, in this, that the lands described as Lots Eight, Nine, and Ten of Section Ten, Township Twenty North, Range Sixteen West, were not included and embraced in the Executive Orders of withdrawal, dated December 15, 1908, and July 2, 1910, respectively.

c. On the further ground that the said survey purports to be a corrective re-survey of Section Ten, Township Twenty North, Range Sixteen West, embracing lands as alleged and described in the bill of complaint, as Lots Eight, Nine and Ten, the title to which was not in the United States at the time of said survey, but was, and is now, in private ownership, having passed by the patent of the United States to S. D. Pitts, on April 2, 1860, according to the official plat of survey of A. W. Warren, United States Deputy Surveyor, in 1839, and approved by the Commissioner of the General Land Office on

August 31, 1839, and from Pitts, passing through mesne conveyances to the Jeems Bayou Fishing and Hunting Club, one of the appellants and cross-appellees herein.

d. On the ground that said survey of March 28, 1917, being made subsequent to the official survey of A. W. Warren, United States Deputy Surveyor, in 1839, and at the time of the issuance thereon of patent to the Fractional Southwest quarter of Section Ten, Township Twenty North, Range Sixteen West, the plat of survey of Warren showed that the Fractional Quarter of said section borders on Ferry Lake, or Jeems Bayou, and for which said reason the surveys of 1913-14, March 28, 1917, are inadmissible to show that title to any lands lying between the fractional quarter section and the waters of Jeems Bayou, or Ferry Lake, remains or is in the United States, and further, that said survey, if admitted, would, in effect, deprive S. D. Pitts, and his assigns of the lands lying between the meander of said fractional quarter section and Jeems Bayou, or Ferry Lake, acquired and vested under said patent, bottomed on the approved official plat of survey of A. W. Warren, United States Deputy Surveyor.

e. On the further ground that the said surveys of 1913-1914 and of March 28, 1917, made subsequent to such dates, (Warren's survey of 1839, and issuance of patent to S. D. Pitts, April 2, 1862), are incompetent to impair, contradict, reconstruct, explain and impeach the verity of A. W. Warren's official survey, field notes and plat, or of the patent, to which the same had been issued to S. D. Pitts, and to affect, abridge, or deny the exercise and enjoyment of the access and approach to the water of said Jeems Bayou, or Ferry Lake, or to any riparian rights accorded to said property bordering on said Ferry Lake under the laws of the State of Louisiana.

f. On the further ground, that the said purported corrective survey, or re-survey, is inadmissible, for the reason that if admitted and given effect, it would deprive, abridge and deny to said S. D. Pitts and his assigns, without due process of law, all of his rights, title and interest, rights of property, and privileges in said lands lying between the meander of said quarter section and Ferry Lake, acquired and vested by the patent issued by the United States in 1860, bottomed upon the approved official survey, field notes and plat of A. W. Warren, United States Deputy Surveyor, approved by the Commissioner of the General Land Office, in contravention to, and in violation of the Fifth Amendment of the Constitution of the United States, and would, further, abridge, deprive and deny to the said S. D. Pitts, and his assigns, without due process of law, all of his, or their, rights, title or interest, rights of property and privileges of the access to the waters of said Jeems Bayou, or Ferry Lake, accorded by the laws of the State of Louisiana, and also in violation and in contravention to the Fourteenth amendment to the Constitution of the United States.

g. That the said surveys of 1913-1914 and March 28, 1917, and field notes are incompetent to show gross error, omission or fraud in the survey of A. W. Warren, United States Deputy Surveyor, made

in 1839, and of the Bristol survey of 1871, if any, for the reason, that said gross error, omissions or fraud, cannot affect bona fide and innocent purchasers who have acquired the said Fractional Southwest quarter of Section Ten, Township Twenty North, Range Sixteen West, on the faith of the correctness of said official survey and plat of A. W. Warren, on which the patent was issued; and, further, that no proof of omission, error or fraud is admissible as such is not specifically alleged in the pleadings or in the bill of complaint.

Sixth.

The Court erred in holding and deciding that A. W. Warren, United States Deputy Surveyor, did not run his said traverse lines approximately with the contour of Ferry Lake, but remotely therefrom, instead of holding and deciding that, at the time and when A. W. Warren ran said traverse lines, he did so with reference to conditions, and to the stage of the waters of Ferry Lake, as they then existed, and as he found them; and that the lands, in controversy, and other lands, shown now to exist between his said traverse or meander line, and Ferry Lake, as uplands, were, when said lines were so run by him, covered by, and were not exposed above, the waters of Ferry Lake.

Seventh.

That the Court erred in holding and deciding that there were facts or circumstances shown in the evidence, disclosing an intention to limit the Fractional Southwest quarter of Section Ten, Township Twenty North, Range Sixteen West of Louisiana Meridian to the actual traverse lines, or to cause such results to follow the field notes and plat of survey of the said A. W. Warren, U. S. Deputy Surveyor.

Eighth.

That the Court erred in not sustaining the equities pleaded by the Appellants and Cross-Appellees against the Appellee and Cross-Appellant to recover herein, in that it would be inequitable and unconscionable to permit the Appellee and Cross-Appellant, the Government of the United States, to recover herein, because of material representations so made by the said Government, by and through its authorized officers and agents; to-wit: S. L. Lamereaux, Commissioner of the United States Land Department to the Honorable N. C. Blanchard, of date February 8th, 1897; and George Otis Smith, Director of the Interior Department, dated November 6th, 1908, to the Honorable, the Secretary of the Interior, wherein it was stated that there was no public land belonging to the United States in Section Ten, Township Twenty, Range Sixteen West, which representations were relied and acted upon by the Appellants and Cross-Appellees herein, to their great financial injury.

Ninth.

The Court erred in condemning the Appellants and Cross-Appellees for the value of any oil produced from the premises in controversy.

Wherefore, the Appellants and Cross-Appellees herein pray that the said decree be reversed and for general relief.

(Signed) N. C. BLANCHARD,
H. C. WALKER, JR.,
ELIAS GOLDSTEIN,
Solicitors for Jeems Bayou Fishing and Hunting Club.

(Signed) HAMPDEN STORY,
Solicitor for Producers Oil Company and The Texas Company.

Appeal Bond.

Filed July 1st, 1921.

United States Circuit Court of Appeals.

In Equity.

No. 3522.

JEEMS BAYOU FISHING AND HUNTING CLUB, PRODUCERS OIL COMPANY, and THE TEXAS COMPANY, Appellants and Cross-Appellees,

vs.

UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Know all men by these presents: That we, Jeems Bayou Fishing and Hunting Club, Producers Oil Company and The Texas Company, as principals, and United States Fidelity and Guaranty Company of Baltimore, Maryland, as surety, are held and firmly bound unto and in favor of the United States of America, appellee and cross-appellant, in the above numbered and entitled cause, in the full sum of Two hundred and eighty thousand ($280,000.00) Dollars, for the payment of which well and truly to be made, we hereby bind ourselves, our successors and legal representatives firmly and in solido.

Dated at Shreveport, State of Louisiana, on this 24th day of June, 1921.

The condition of the above obligation is such that,

Whereas, on the 10th day of June, 1921, in the United States Circuit Court of Appeals, Fifth Circuit, in a suit pending in that Court, wherein Jeems Bayou Fishing and Hunting Club, Producers Oil Company and The Texas Company were appellants and cross-appel-

lees, and the United States of America was appellee and cross-appellant, numbered on Equity Docket as No. 3522, wherein a decree was entered and signed against the said Jeems Bayou Fishing and Hunting Club, Producers Oil Company and The Texas Company, affirming the decree of the United States District Court for the Western District of Louisiana, sitting at Shreveport, decreeing that the appellee and cross-appellant is the owner of the land in controversy; and

Whereas, the said Jeems Bayou Fishing and Hunting Club, Producers Oil Company and The Texas Company, having obtained an appeal with supersedeas, to the Supreme Court of the United States of America;

Now, therefore, if the said Jeems Bayou Fishing and Hunting Club, Producers Oil Company, and The Texas Company, shall prosecute such appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; otherwise to remain in full force and effect.

JEEMS BAYOU FISHING AND HUNTING CLUB,
(Signed) By ELIAS GOLDSTEIN,
Attorney;
PRODUCERS OIL COMPANY, AND THE TEXAS COMPANY,
(Signed) By HAMPDEN STORY,
Attorney,
Principals.
UNITED STATES FIDELITY & GUARANTY COMPANY,
(Signed) By WM. M. FORD, [SEAL.]
Attorney-in-fact,
Surety.

Approved this 24th day of June, 1921.
(Signed) R. W. WALKER,
U. S. Circuit Judge.

United States District Court, Western District of Louisiana.

Clerk's Office.

I, W. B. Lee, Clerk of the United States District Court for the Western District of Louisiana, do hereby certify that the United States Fidelity and Guaranty Company, of Baltimore, Maryland, appears on the list of surety companies acceptable on bonds, which list was issued by the Secretary of the Treasury of the United States on May 31, 1921, and now on file in this office. The said U. S. Fidelity and Guaranty Company is acceptable on any one bond to the limit of $830,176.63.

I do further certify that the said U. S. Fidelity and Guaranty Co. has complied with the provisions of congress by appointing an agent

for process within the Western District of Louisiana, and bonds executed by that Company are approved by this court.

Witness my official hand and the seal of the Court at Shreveport, La., this 15th day of June, 1921.

[SEAL.] (Signed) W. B. LEE,
Clerk.

Stipulation as to Transmission of Original Exhibits.

Filed July 1st, 1921.

United States Circuit Court of Appeals, Fifth Circuit.

In Equity.

No. 3522.

JEEMS BAYOU FISHING AND HUNTING CLUB, PRODUCERS OIL COMPANY, and THE TEXAS COMPANY, Appellants and Cross-Appellees,

versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

In the above numbered and entitled suit, it is agreed by and between counsel for all parties thereto, as follows:

That, Whereas, There have been sent up to the United States Circuit Court of Appeals, certain maps and exhibits, in the original, for reproduction in the transcript in said cause, namely:

1. Plat of survey made by A. W. Warren, Deputy Surveyor, approved August 31, 1839.

2. Field notes of the Warren survey.

3. Resurvey of Township 20 North, Range 16 West, approved by the Commissioner of the General Land Office, July 24, 1916.

4. Supplemental plat of Township 20 North, Range 16 West, approved March 28, 1917, by the Commissioner of the General Land Office.

5. Supplemental topographic plat of Township 20 North, Range 16 West, approved March 28, 1917, by the Commissioner of the General Land Office.

and,

Whereas, said above suit has been appealed from the United States Circuit Court of Appeals for the Fifth Circuit, to the United States Supreme Court, and all of said plats and exhibits were included in the original in the transcript of appeal in the above numbered and entitled suit, in the United States Circuit Court of Appeals; and

Whereas, the cost of reproducing and incorporating said exhibits in the transcript of appeal from the United States Circuit Court of Appeals for the Fifth Circuit, to the United States Supreme Court, will be very large;

Now, therefore, it is agreed that in lieu of reproducing and including said exhibits in the transcript of appeal to the United States Supreme Court, the Clerk of the United States Circuit Court of Appeals, for the Fifth Circuit, may bind or fasten together, in such manner as he may deem proper, the said plats and exhibits, and index the same so that ready reference may be had to them, and forward the same with the transcript of appeal in this case, to the Clerk of the United States Supreme Court.

It is further agreed that said exhibits shall be deemed and considered as a part of the record on appeal in said above numbered and entitled suit, and to the same extent as if said exhibits mentioned had been reproduced and incorporated in said transcript.

It is further agreed that this stipulation shall be printed in the transcript of appeal to be filed in the United States Supreme Court.

Thus done and signed in duplicate this 28 day of June, 1921.

(Signed) ROBERT A. HUNTER,
Solicitor for Appellee and Cross-appellant.

(Signed) HAMPDEN STORY,
N. C. BLANCHARD,
H. C. WALKER, JR.,
ELIAS GOLDSTEIN,
Solicitors for the Appellants and Cross-appellees.

Clerk's Certificate.

UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Circuit.

I, Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 715 to 744 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 3522, wherein the Jeems Bayou Fishing and Hunting Club, Producers Oil Company, and The Texas Company, are appellants and cross-appellees, and The United States of America is appellee and cross-appellant, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 714 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of the said Circuit Court of Appeals, at my office in the City of

New Orleans, Louisiana, in the Fifth Circuit, this 6th day of July, A. D. 1921.

[Seal of the United States Circuit Court of Appeals, Fifth Circuit.]

FRANK H. MORTIMER,
Clerk of the United States Circuit Court of Appeals, Fifth Circuit.

THE UNITED STATES OF AMERICA:

The President of the United States to United States of America, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States at Washington, D. C., within thirty (30) days from the date hereof, pursuant to an order allowing an appeal sued out and filed in the Clerk's Office of the United States Circuit Court of Appeals for the Fifth Circuit, in the cause being in Equity No. 3522, wherein Jeems Bayou Fishing and Hunting Club, Producers Oil Company, and The Texas Company are appellants and cross-appellees, and the United States of America is appellee and cross-appellant, to show cause, if any there be, why the decree rendered against the said Jeems Bayou Fishing and Hunting Club, Producers Oil Company and The Texas Company as in said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Joseph McKenna, Senior Associate Justice of the United States, this 24th day of June in the year of our Lord one thousand nine hundred and twenty-one.

R. W. WALKER,
United States Circuit Judge.

[Endorsed:] No. 3522. In Equity. United States Circuit Court of Appeals, Fifth Circuit. Jeems Bayou Fishing and Hunting Club, Producers Oil Company, and The Texas Company, Appellants and Cross-Appellees, vs. United States of America, Appellee and Cross-Appellant. Citation. Filed 1st day of July, 1921. Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals.

Service accepted and acknowledged this 27th day of June, 1921.

ROBERT A. HUNTER,
Special Assistant to the Attorney General.

Endorsed on cover: File No. 28,362. U. S. Circuit Court Appeals, 5th Circuit. Term No. 407. Jeems Bayou Fishing and Hunting Club, Producers Oil Company and The Texas Company, appellants, vs. The United States of America. Filed July 12th, 1921. File No. 28,362.

748 [1] In the United States Circuit Court of Appeals, Fifth Circuit.

Petition for cross appeal.

Filed July 23rd, 1921.

JEEMS BAYOU HUNTING & FISHING CLUB ET AL., appellants and cross appellees,
versus
UNITED STATES OF AMERICA, APPELLEE AND CROSS APPELLANT. } No. 3522.

To the honorable the Judges of the United States Circuit Court of Appeals for the Fifth Circuit:

Now into this honorable court comes the United States of America, appellee and cross appellant, in the above numbered and entitled cause, and, with respect, represents:

That on June 10, 1921, this court entered a final decree in said cause, from which the appellants and cross appellees have appealed to the Supreme Court of the United States; that in said decree there was in part error greatly to the prejudice and injury of the United States of America, as will more fully appear by the assignment of errors filed and annexed hereto. Appellee and cross appellant desires to take a cross appeal from said decree to the Supreme Court of the United States.

Wherefore the United States of America prays that a cross
749 appeal may be allowed in said cause from this court [2] to the Supreme Court of the United States, and that proper orders for the allowance of such cross appeal may be made by this court.

(Signed) ROBERT A. HUNTER,
Special Assistant to the Attorney General.

Order.

The foregoing petition for a cross appeal (with assignment of errors heretofore filed and hereto annexed) being considered:

It is ordered that the United States of America, appellee and cross appellant in the above numbered and entitled cause, be and is hereby granted and allowed a cross appeal in said cause from this court to the Supreme Court of the United States.

Thus done and signed this 23rd day of July, 1921.

(Signed) R. W. WALKER,
Presiding Judge, United States Circuit Court of Appeals, Fifth Circuit.

In the United States Circuit Court of Appeals, Fifth Circuit.

Assignment of errors upon cross appeal.

Filed July 23rd, 1921.

JEEMS BAYOU HUNTING & FISHING CLUB ET AL., appellants and cross appellees,
versus
THE UNITED STATES OF AMERICA, APPELLEE and cross appellant.
No. 3522.

750 [3] Now comes the United States of America, appellee and cross appellant in the above numbered and entitled cause, and in connection with the petition for an appeal herein presents this assignment of errors and says that the opinion and decree of the United States Circuit Court of Appeals for the Fifth Circuit entered June 10, 1921, in said cause, is erroneous in the following particulars:

1. The court erred in holding that the measure of liability for the oil taken by defendants from the land in suit was its value after deducting the cost of production, whereas the court should have held that the measure of liability was the value of the oil less only the cost of operating the wells and that the expense of drilling said wells could not be offset against the value of such oil.

2. The court erred in failing to hold that defendants were not entitled to deduct from the value of the oil extracted by them from the land in controversy the cost of drilling said wells, which costs are shown by stipulation of counsel contained in the record on appeal, and which expenses of exploration and discovery should not be considered as a part of the cost of production and should not be allowed as an offset or credit against the value of said oil.

3. The court erred in not reversing in part the decree of the district court and in not remanding said cause with directions to said district court to enter a decree in favor of the United States
751 for the full value of the oil less only the expenses [4] incurred by defendants in operating the wells.

Wherefore the United States of America, appellee and cross appellant, prays that the decree of the United States Circuit Court of Appeals for the Fifth Circuit be reversed in so far as it affirmed that portion of the decree of the district court allowing defendants the cost of drilling the wells in suit as an offset or credit against the value of the oil; that the said cause be remanded with directions for the entry of a decree in favor of the United States for the full value of the oil taken by defendants from said land, less only the cost of operating said wells, and excluding and disallowing as an offset or credit against the value of said oil the sums expended or costs incurred by defendants in drilling said wells, to the end that the United States may recover the value of said oil free of all expenses incurred by defendants in discovering or reaching the same; that the

said decree be reversed to that extent only and affirmed in all other respects.

(Signed) ROBERT A. HUNTER,
Special Assistant to the Attorney General.

752 UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

I, Frank H. Mortimer, clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the foregoing four pages, numbered from 1 to 4, inclusive, contain a true copy of the petition of the United States of America for a cross appeal, order allowing same, and assignment of errors in the case of Jeems Bayou Hunting & Fishing Club et al., appellants and cross appellees, versus The United States of America, appellee and cross appellant, No. 3522, as the same remains upon the files and records of said United States Circuit Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals, at the city of New Orleans, Louisiana, this 29th day of July, A. D. 1921.

[SEAL.] FRANK H. MORTIMER,
Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

753 THE UNITED STATES OF AMERICA.

The President of the United States to Jeems Bayou Hunting and Fishing Club, Producers Oil Company, and The Texas Company, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to a petition and order for cross appeal sued out and filed in the clerk's office of the United States Circuit Court of Appeals for the Fifth Circuit, in the cause wherein the said Jeems Bayou Hunting and Fishing Club, Producers Oil Company, and the Texas Company are appellants and cross appellees, and the United States of America is appellee and cross appellant, to show cause, if any there be, why the final decree rendered against the said United States of America as in said petition and order of cross appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable William Howard Taft, Chief Justice of the United States, this 23rd day of July, in the year of our Lord one thousand nine hundred and twenty-one.

R. W. WALKER,
United States Circuit Judge.

Service of the within citation of appeal accepted and acknowledged this July 26, 1921.

HAMPDEN STORY,
Attorney for Producers Oil Company and the Texas Company, Appellants and Cross Appellees.
BLANCHARD, GOLDSTEIN & WALKER,
Per ELIAS GOLDSTEIN,
Attorneys for Jeems Bayou Fishing & Hunting Club, Appellant and Cross Appellee.

(Indorsed:) No. 3522. United States Circuit Court of Appeals, Fifth Circuit. Jeems Bayou Hunting & Fishing Club et als., appellants & cross appellees, vs. the United States of America, appellee and cross appellant. Citation. U. S. Circuit Court of Appeals. Filed Jul. 28, 1921. Frank H. Mortimer, Clerk.

(Indorsement on cover:) No. 3522. United States Circuit Court of Appeals for the Fifth Circuit. Jeems Bayou Hunting & Fishing Club et al., appellants and cross appellees, vs. The United States of America, appellee and cross appellant. Copy of petition for cross appeal, order allowing same, and assignment of errors. Office of the clerk, Supreme Court U. S. Received Aug. 4, 1921.

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WM. R. STANS
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No. 119.

Supreme Court of the United States

OCTOBER TERM, A. D. 1922.

JEEMS BAYOU FISHING AND HUNTING CLUB, PRODUCERS OIL COMPANY, and THE TEXAS COMPANY,

Appellants and Cross Appellees,

versus

UNITED STATES OF AMERICA,

Appellee and Cross Appellant.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

Brief for Appellants and Cross-Appellees.

ELIAS GOLDSTEIN,
H. C. WALKER,
Solicitors for Jeems Bayou Fishing and Hunting Club.

HAMPDEN STORY,
HARRY T. KLEIN,
Solicitors for Producers Oil Company and The Texas Company.

CHAS. P. YOUNG CO., Printers, 190 William St., N. Y.

INDEX.

	PAGE
STATEMENT OF CASE	1
ASSIGNMENT OF ERRORS	5
SUMMARY OF ARGUMENT	6
ARGUMENT	7

TABLE OF CASES.

Albany R. Bridge Co. *v.* People, 64 N. E. 350	17
Bank of U. S. *v.* Dandridge, 12 Wheat. 64	32
Barnes *v.* Winona Oil Co., 200 Pac. 985	54
Barringer *v.* Davis, 141 Iowa 428, 120 N. W. 65	17-29
Bender *v.* Brooks, 103 Tex. Sup. Ct. 329, 127 S. W. 168, Ann. Cas. 1913-A 559	55
Brown *v.* Dunn, 135 Wis. 377, 115 N. W. 1098	17
Brown *v.* Huger, 21 How. 305	17
Canal Bank *v.* Hudson, 111 U. S. 80	55
Chapman & Dewey *v.* St. Francis, 232 U. S. 186	12
Coburn *v.* San Mateo, 75 Fed. 520	17
Colorado Coal & Iron Co. *v.* U. S., 123 U. S. 307	37
Colorado Cent. Consol. Min. Co. *v.* Turck, 70 Fed. 294	55
Cook *v.* Gulf Refining Co. of La., 135 La. 609	54
County of St. Clair *v.* Lovingston, 23 Wall. 46	16
Cragin *v.* Powell, 128 U. S. 691	11-14-25
Daniels *v.* Tearney, 102 U. S. 415	50
Fletcher *v.* Peck, 6 Cranch 87	37
Forsyth *v.* Smale, 7 Bissell 201, No. 4950 (Fed. Cases 471)	15
French-Glenn Live Stock Co. *v.* Springer, 185 U. S. 47	19-20
Galliher *v.* Cadwell, 145 U. S. 368	50
Gauthier *v.* Morrison, 232 U. S. 452	19-21
Grand Rapids & Ind. R. R. Co. *v.* Butler, 159 U. S. 87	33

PAGE

Greene *v.* U. S., 274 Fed. 145 30-31
Guffey *v.* Smith, 237 U. S. 101 54
Hardin *v.* Jordan, 140 U. S. 371 15-16
Heath *v.* Wallace, 138 U. S. 573 12
Hemmer *v.* U. S., 204 Fed. 898, (Aff'd. 241 U. S. 379) 48
Horne *v.* Smith, 159 U. S. 40 19
Jackson *v.* Ludeling, 99 U. S. 513 53
Jefferis *v.* E. Omaha Land Co., 134 U. S. 178 12
Johnson *v.* Johnson, 14 Idaho 561, 95 Pac. 499, 24 L. R. A. (N. S.) 1240 17-29
Kean *v.* Calumet Canal & Improvement Co., 190 U. S. 452 33-34
Lane *v.* United States, 274 Fed. 290 30
Lee Wilson & Co. *v.* United States, 245 U. S. 24 19-22
Lindsey *v.* Hawes, 2 Black 554 25-38-44
Martel *v.* Jennings, 114 La. 351 54
Maxwell Land Grant Case, 121 U. S. 325 37
McIver's Lessee *v.* Walker, 9 Cranch 173 12-14
Middleton *v.* Prichard, 3 Scannon 510; 38 A. D. 113 17
Mitchell *v.* Smale, 140 U. S. 406 16-27
New Orleans *v.* Gaines, 131 U. S. 191 53
Newsom *v.* Pryor's Lessee, 7 Wheat. 7 17
Niles *v.* Cedar Point Club, 175 U. S. 300 19-20
Omaha Smelting Co. *v.* Tabor, 13 Col. 41, 21 Pac. 926, 5 L. R. A. 236 55
Palmer *v.* Wilkinson, 141 La. 874 17
Perry *v.* The Board of Commissioners, 132 La. 415 17
Producers Oil Co. *v.* Hanzen, 238 U. S. 325 19-21
Railroad Co. *v.* Schurmeir, 7 Wall. 272 16
Rue *v.* Oregon & W. R. Co., 186 Pac. 1075 17
Schmitz *v.* Klee, 173 Pac. 1026 17
Security Land & Exploration Co. *v.* Burns, 193 U. S. 167, 182 19-20
Sizor *v.* City of Logansport, 44 L. R. A. 814 17
Smelting Co. *v.* Kemp, 104 U. S. 636 33
State of Iowa *v.* Carr, 191 Fed. 257 47-48

PAGE

State of Michigan *v.* Jackson L. & S. R. Co., 69 Fed. 116 48
State *v.* Hackley, 124 La. 854 38
Tolleston Club of Chicago *v.* State, 38 N. E. 214 17
United States *v.* B. & M. R. R. Co., 98 U. S. 334 38
United States *v.* Budd, 144 U. S. 154 33
United States *v.* Calif. & Oregon Land Co., 148 U. S. 31 44-47-53
United States *v.* Chandler-Dunbar, 152 Fed. 25 47
United States *v.* Clark, 200 U. S. 601 38
United States *v.* Diamond Coal & Coke Co., 254 Fed. 266 48
United States *v.* Detroit Timber & Lbr. Co., 131 Fed. 668 (Aff'd. 200 U. S. 321) 37-48
United States *v.* Iron-Silver Mining Co., 128 U. S. 673 37
United States *v.* Marshall Silver Mining Co., 129 U. S. 579 38
United States *v.* McCutchen, 238 Fed. 575 54
United States *v.* Midway Northern Oil Co., 232 Fed. 619 48-54
United States *v.* Pa. & L. E. Dock Co., 272 Fed. 839 48
United States *v.* Stinson, 125 Fed. 907, (Aff'd. 197 U. S. 200) 37-44-48
United States *v.* Winona R. R. Co., 165 U. S. 463 37
Whitaker *v.* McBride, 197 U. S. 510 17
Williamson *v.* Jones, 38 L. R. A. (W. Va.) 694 55
Zelma Oil Co. *v.* Nemo Oil Co., 203 Pac. 203 54

(20) North, Range sixteen (16) West, Caddo Parish, Louisiana, and to compel defendants to account for the value of oil and gas extracted therefrom.

For the purpose of brevity the United States of America (Appellee and cross-appellant) will be referred to in this brief as plaintiff, and the Jeems Bayou Fishing & Hunting Club, Producers Oil Company and The Texas Company (Appellants and cross-appellees), as defendants.

The plaintiff's assertion to the relief sought was resisted by the defendants on the ground:

(1) That the title to said land was acquired by Stephen D. Pitts, under patent issued to him October 1, 1860, for the Southwest fractional quarter (SW frl. ¼) of Section ten (10), Township twenty (20) North, Range sixteen (16) West, "according to the official plat of the survey of said lands, returned to the General Land Office by the Surveyor General." (The said plat of survey refers to that of A. W. Warren, United States Deputy Surveyor, made in 1839, filed in the General Land Office, after being approved, in writing, August 31, 1839.)

(2) That the said official plat of survey, on which said patent issued to Stephen D. Pitts, demonstrates that the said Southwest fractional quarter (SW frl. ¼) of Section ten (10), Township twenty (20) North, Range sixteen (16) West, borders on, and calls for, "*Ferry Lake,*" a navigable body of water, as a boundary, leaving no lands in the ownership of the United States, the

plaintiff, between the meander line of said plat of survey, and the waters of Ferry Lake, and that the Department of the Interior was without jurisdiction, power, or authority, to cause a survey of the lands lying between the said meander line and Ferry Lake to be made, and to wedge this subsequent survey of March 28, 1917, known as "the Kidder Survey", between the said meander line and Ferry Lake, after patent had issued to Stephen D. Pitts, and thereby deprive him and his assigns of said lands, and of the privileges of access, and riparian rights to the shore and waters of said Lake, secured to him by virtue of his patent, bottomed on, and according to "the official plat of the survey of said lands, returned to the General Land Office by the Surveyor General."

(3) That the title to said land thereafter passed from said Stephen D. Pitts, and was acquired through mesne conveyances by the Jeems Bayou Fishing and Hunting Club (Rec. 556, 557) which leased it to the Producers Oil Company, October 17, 1910, (Rec. 563, 567) for the purpose of exploiting the same for oil and gas, and said lease thereafter passed from said company to The Texas Company.

The defendants, the Jeems Bayou Fishing and Hunting Club, and the Producers Oil Company, as a further defense to the asserted rights of the plaintiff, tendered a plea of estoppel on the ground that the plaintiff, through its legally constituted authority, the Commissioner of the Land Office, had, prior to the institution of

this suit, disclaimed ownership of the said lands in controversy, and in and to all lands lying between the meander line of the said official plat of survey of A. W. Warren and Ferry Lake, which estoppel they specially pleaded in bar of the right of plaintiff to recover the said lands and the value of the oil and gas extracted and removed therefrom. The defendants prayed that in the event the said lands are decreed to be the property of plaintiff, then, and in that case, they should recover as against the value of the oil and gas produced therefrom, the costs of the production thereof.

The case was referred to a Master who took testimony and made a report (Rec. 622, 636) finding that the lands in question had been omitted from the original Warren survey by manifest error; that the Government was the owner thereof and was entitled to recover the value of the oil removed and extracted therefrom, less the cost of producing the same. Defendants excepted to the report of the Master and the Government excepted to so much thereof as allowed defendants the cost of production of said oil. The District Court overruled all exceptions and entered a decree in favor of the Government in accordance with the Master's report. On appeal of said cause to the United States Circuit Court of Appeals for the Fifth Circuit, the said decree was affirmed.

The defendants have appealed to this court from the decree of the United States Circuit Court of Appeals and complain of it in so far as it is adverse to them on the ground that the decree (Rec. 724) is erroneous,

unjust, and prejudicial to them for the reasons set forth with particularity in the defendants' Assignment of Errors, to which reference is hereby made.

ASSIGNMENT OF ERRORS.

The defendants' Assignment of Errors (Rec. 726—nine in number) may be summarized as follows:

(1) The Court erred in holding that the property in controversy belonged to the United States; that it was no part of said fractional southwest quarter of section ten (10); and in ruling that the meander line of said fractional quarter run by Surveyor Warren is a line of boundary instead of holding and deciding that said fractional quarter section extends to and abuts on Ferry Lake. (Assignment of Errors 1-2-3-6 and 7.)

(2) The Court erred in permitting plaintiff over defendants' objections to introduce in evidence surveys of A. D. Kidder of 1913-14 and March 28, 1917, and other testimony and evidence to impeach the Warren survey of 1839 for the reason that plaintiff did not allege or plead fraud, mistake or gross error. (Assignment of Errors 4 and 5.)

(3) The Court erred in refusing to sustain the equities pleaded by defendants against the Government in its action to recover the lands in controversy between the meander line of Warren's survey and Ferry Lake. (Assignment of Errors 8.)

(4) The Court erred in condemning the defendants for the value of any oil produced from the premises in controversy. (Assignment of Errors 9.)

The Assignment of Errors to the decree of the United States District Court for the Western District of Louisiana (Rec. 682-687) is substantially similar in many respects to the Assignment of Errors to the decree of the United States Circuit Court of Appeals for the Fifth Circuit.

SUMMARY OF ARGUMENT.

(1) Where a plat of survey exhibits lands granted under patent on a water course, the water course and not the meander line of such survey is the actual boundary of the land conveyed. page 12

(2) Evidence is inadmissible to prove fraud, mistake or error in Warren's survey of 1839 in the absence of allegations in Plaintiff's Bill of Complaint, alleging the facts on which such fraud, mistake or error are founded. page 35

(3) Equitable estoppels are pleadable against the United States and the equities pleaded by defendants against the Government's action to recover the lands in controversy should have been sustained. page 39

(4) Argument on cross appeal. The entry of defendants on the land and the extraction of oil therefrom was in good faith,—and the measure of damages for the removal of oil from the lands in controversy is the value thereof less the cost of production. page 51

ARGUMENT.

In its consideration of this case we ask this honorable court to keep in mind the following material facts, which we claim are shown by the record, to-wit:

In 1839, A. W. Warren, Deputy United States Surveyor, filed in the General Land Office a plat of survey of Township twenty (20), Range sixteen (16) West, Northwestern District, Louisiana.

October 1, 1860, a patent was issued to Stephen D. Pitts for the southwest fractional quarter (SW frl. ¼) of Section ten (10), Township twenty (20) North, Range sixteen (16) West, "according to the official plat of the survey of said lands returned to the General Land Office by the Surveyor General." (Rec. 554.) Although it was stated in the patent that this fractional quarter section contained only twenty-three acres, it is shown by said official plat to contain 55.88 acres and to border on and be bounded by Ferry Lake, a navigable body of water.

The land in controversy at the time of the issuance of the patent, and particularly at the date of the survey in 1839, was practically valueless; and, as Warren was a contract surveyor paid on the basis of acreage surveyed, there would seem to be no basis for any presumption of fraud on his part.

Title to said lands thereafter passed from Stephen D. Pitts and was acquired through mesne conveyances by the Jeems Bayou Fishing and Hunting Club, which leased it to the Producers Oil Company, October 17, 1910 (Rec. 563, 567), for the purpose of exploiting the same

for oil and gas, and said lease thereafter passed from said Company to The Texas Company.

February 8, 1897, the Commissioner of the General Land Office in a letter to Hon. N. C. Blanchard of the United States Senate (Rec. 574) advised that the official plat shows no unsurveyed land in sections 9, 10, 15 and 16 of Township twenty (20); that "Ferry Lake was duly meandered and the surveys closed thereon."

November 6, 1908, the General Land Office by letter (Rec. 577) advised the Secretary of Interior just what lands were claimed by the Government in Township twenty (20), which letter did not include any of the property in controversy and shows conclusively that the Government did not claim any land in section ten (10).

In April, 1910, the Jeems Bayou Fishing and Hunting Club filed an action in the District Court of the First Judicial District, Caddo Parish, Louisiana, against the Board of Commissioners of the Caddo Levee District, alleging that plaintiff and grantors in its chain of title had been in continuous and good faith possession of said quarter section, including the lands in controversy in this suit, for periods of more than ten years and more than thirty years, and that defendants were slandering plaintiff's title and interfering with its possession. The judgment which was entered on March 8, 1911, decreed that the plaintiff in said cause was the owner of the land between the meander line (Warren's survey) and Ferry Lake, and adjudged the Jeems Bayou Fishing and Hunting Club "the owner and in possession of the whole of

the southwest fractional quarter (SW frl. ¼), Section ten (10), Township twenty (20) North, Range sixteen (16) West, Parish of Caddo, Louisiana, the said line of said fractional quarter section, on the side or sides that same border upon Ferry or Caddo Lake, to extend to the mean high water mark of the Lake, as shown by lines traced in yellow on the map made by Crawford and Barnes, surveyors appointed by the Court, which map is filed in the record of this cause and is, by reference, made a part of this judgment." (Rec. 717.)

In 1916-1917 the Department of the Interior caused a survey of the lands lying between the meander line of said fractional quarter section and Ferry Lake to be made and to wedge this subsequent survey, dated March 28, 1917, known as the "Kidder Survey" between the said meander line and Ferry Lake. After the approval of the Kidder plat of survey, this action was filed in July 1917 by the Government to recover title to lots 8, 9 and 10 in said fractional southwest quarter of section ten (10).

POINT ONE.

Ferry Lake and not the meander line the actual boundary.

In 1839 the United States, plaintiff, caused a survey to be made by A. W. Warren, Deputy United States Surveyor, of Township twenty (20) North, Range sixteen (16) West, Louisiana Meridian; which official plat of survey, after having been approved, August 31, 1839, was "returned to the General Land Office by the Surveyor General."

Thereupon, the plaintiff offered its lands for sale, on the plat of said official survey so returned and filed in the General Land Office, to settlers.

On the faith of, and in reliance upon, the verity of said plat of survey, Stephen D. Pitts, on August 1, 1860, twenty-one years after said plat was approved and returned to the General Land Office by the Surveyor General, purchased of plaintiff, the United States, the southwest fractional quarter of Section ten (10), Township twenty (20) North, Range sixteen (16), and received therefor a muniment of title, or patent, "according to the official plat of survey of said land returned to the General Land Office by the Surveyor General" (Rec. 554); it being shown and indicated on, and by, the said plat of survey that the said southwest fractional quarter of Section ten (10) bordered on Ferry Lake, a navigable body of water, designated, marked and named thereon "Ferry Lake" as a call for a boundary.

The United States, having sold and granted said southwest fractional quarter (SW frl. ¼) Section ten (10), Township twenty (20) North, Range sixteen (16), according to its official plat of survey, to Stephen D. Pitts, reference being made to said plat, makes the plat as much a part of the patent as it would be, had the plat been expressly incorporated into, and made a part of, the patent itself.

By so platting the southwest fractional quarter of Section ten (10) as bounded on Ferry Lake, the plat showing the Lake to be a boundary to the lands conveyed, the legal effect to be given to the patent is the same as it would be if the description of the land in the patent had, in express language, stated that the southwest fractional quarter section ten (10), Township twenty (20), Range sixteen (16) West, extends to, and is bounded by, Ferry Lake. The waters of that lake are thus made a designated object, constituting the boundary of said lands. In other words, the patentee takes all of the lands, regardless of acreage, up to the waters of Ferry Lake, "together with all the rights, privileges, immunities and appurtenances of whatsoever nature thereto belonging."

Where lands are granted by the United States according to its official plat of survey, the plat itself becomes a part of the grant or deeds by which they are conveyed, and controls so far as limits are concerned.

In Cragin *vs.* Powell, 128 U. S. 691, at p. 696 this Court said:

> " * * * It is a well-settled principle that when lands are granted, *according to an official plat of the survey of such lands,* the plat itself, with all its notes, lines, descriptions and land marks, becomes as much a part of the grant or deed by which they are conveyed, and controls so far as limits are concerned, as if such descriptive features were written out upon the face of the deed or the grant itself." (Italics ours.)

This is the settled and accepted principle of law of this Court as well as the general rule established by the weight of authority.

McIver's Lessee *vs.* Walker, 9 Cranch 173, 178;
Jefferis *vs.* E. Omaha Land Co., 134 U. S. 178, 194;
Heath *vs.* Wallace, 138 U. S. 573, 583;
Chapman and Dewey *vs.* St. Francis, 232 U. S. 186, 197;
9 Corpus Juris 180, §50 of "Boundaries," subtitle "Maps, Plats and Field Notes."

Where a plat of survey exhibits lands granted under patent on a water course, the water course and not the meander line of such survey is the actual boundary of the land conveyed.

Meander lines are not the creatures of statute, but are run as a matter of convenience for the purpose of determining the sinuosities of the shore of the water course, which, by the statute, is held and made the true boundary.

The familiar rule adopted by both the Federal and State courts is that meander lines are not run as boundaries of the tract surveyed but for the purpose of defining the sinuosities of the banks of the stream or other body of water, and as a means of ascertaining the quantity of land embraced in the survey. In such cases the stream or other body of water, and not the meander line, as actually run on the ground, is the boundary.

> 9 Corpus Juris 189, §69, Title "Boundaries," sub-title "Meandered Waters."

Section 2396 of the Revised Statutes (Act February 11, 1905, Chapter 14, 2 Statute, L. 313, Sec. 2) provides:

> "The boundary-lines, actually run and marked in the surveys returned by the surveyor-general, shall be established as the proper boundary-lines of the sections, or subdivisions, for which they were intended, and the length of such lines, as returned, shall be held and considered as the true length thereof. And the boundary-lines which have not been actually run and marked shall be ascertained, by running straight lines from the established corners to the opposite corresponding corners; but in those portions of the fractional townships where no such opposite corresponding corners have been or can be fixed, the boundary-lines shall be ascertained by running from the established corners due north and south or east and west lines, as the case may be, to the watercourse, Indian boundary-line, or other external boundary of such fractional township."

It will be noted that the watercourse in fractional townships, such as is here dealt with, is taken as the boundary of the governmental subdivision, and not as an arbitrary line. The statute points out specifically, where watercourses exist, that this natural object itself shall be taken as the boundary.

The statutory direction for surveying requires the surveyor to survey to the watercourse.

Cragin *vs.* Powell, 128 U. S. 691, 697.

In McIver's *vs.* Walker, 9 Cranch 173, at page 177 this Court said:

> "It is undoubtedly the practice of surveyors, and the practice was proved in this cause, to express in their plats and certificates of survey, the courses which are designated by the needle; and if nothing exists to control the call for course and distance, the land must be bounded by the courses and distances of the patent, according to the magnetic meridian. But it is a general principle that the course and distance must yield to natural objects called for in the patent. All lands are supposed to be actually surveyed, and the intention of the grant is to convey the land according to that actual survey; consequently, if marked trees and marked corners be found, conformable to the calls of the patent, or if watercourses be called for in the patent, or mountains, or any other natural objects, distances must be lengthened or shortened, and courses varied, so as to conform to those objects."

According to the official plat of survey (Warren's

survey, Plat Ex. 2, referred to Rec. 555) the meander line of the southwest fractional quarter of section ten (10) coincides with the border of Ferry Lake; and said plat shows no lands lying between said meander line and the waters of Ferry Lake.

In Forsyth *vs.* Smale, 7 Bissell 201, No. 4950, 9 Fed. Cases 471, 473, the Court said:

> "The uniform rule as to the description of lands in deeds is that the great natural object is to govern, and courses and distances are to yield to the object. The great natural object here was a lake or the water, and the plat shows that the western line of lots 3 and 4 was intended to be the water, and we conclude that the government did not intend to exclude from the operation of the grant which was made to the purchaser, any land between the meandered line and the water. * * *."

In Hardin *vs.* Jordan, 140 U. S. 371, 380, it was held:

> "The meander lines run along or near the margin of such waters are run for the purpose of ascertaining the exact quantity of the upland to be charged for, and not for the purpose of limiting the title of the grantee to such meander lines. It has frequently been held, both by the Federal and state courts, that such meander lines are intended for the purpose of bounding and abutting the lands granted upon the waters whose margins are thus meandered; and that the waters themselves constitute the real boundary."

In Mitchell *vs.* Smale, 140 U. S. 406, at page 413 the Court said:

> "* * * The official plat made from such survey does not show the meander line, but shows the general form of the lake deduced therefrom, and the surrounding fractional lots adjoining and bordering on the same. The patents when issued refer to this plat for identification of the lots conveyed, and are equivalent to and have the legal effect of a declaration that they extend to and are bounded by the lake or stream. Such lake or stream itself, as a natural object or monument, is virtually and truly one of the calls of the description or boundary of the premises conveyed; and all the legal consequences of such a boundary, in the matter of riparian rights and title to land under water, regularly follow."

In County of St. Clair *vs.* Lovingston, 23 Wall. 46, at page 63 the Court said:

> "* * * Where a survey and patent show a river to be one of the boundaries of the tract, it is a legal deduction that there is no vacant land left for appropriation between the river and the river boundary of such tract."

The principle enunciated in the foregoing authorities and those cited *infra* is familiar, and is a recognized rule, or canon, of American Law, both by the Federal and State Courts.

Hardin *vs.* Jordan, 140 U. S. 371, 380;
Railroad Co. *vs.* Schurmeir, 7 Wall. 272, 286;

Newsom *vs.* Pryor's Lessee, 7 Wheat. 7, 11;
Brown *v.* Huger, 21 How. 305;
Perry *v.* The Board of Commissioners, 132 La. 415, 433;
Palmer *v.* Wilkinson, 141 La. 874, 879;
Barringer *vs.* Davis, 141 Iowa 428; 120 N. W. 65, 68, 69;
Brown *vs.* Dunn, 135 Wis. 377; 115 N. W. 1098;
Johnson *vs.* Johnson, 14 Idaho 561; 95 Pac. 499; 24 L. R. A. (N. S.) 1240, 1247;
Middleton *v.* Prichard, 3 Scannon 510; 38 A. D. 113;
9 Corpus Juris 189, title "Boundaries," §69, sub-title "Meandered Waters;"
Coburn *v.* San Mateo, 75 Fed. 520 at 530;
Sizor *v.* City of Logansport, 44 L. R. A. 814;
Schmitz *v.* Klee, 173 Pac. 1026;
Rue *v.* Oregon & W. R. Co., 186 Pac. 1075;
Tolleston Club of Chicago *v.* State, 38 N. E. 214;
Albany R. Bridge Co. *v.* People, 64 N. E. 350.

To this general rule there are several well-defined exceptions, but a careful review and analysis of the cases establishing the exceptions to the rule demonstrate that the decisions reached in such cases depended upon peculiar facts which find no application to the case at bar. Four of the best known cases establishing this exception and relied upon by plaintiff are analyzed and distinguished by this Court in the case of Whitaker *v.* McBride, 197 U. S. 510. In that case this Court again decided

that a meander line is not a line of boundary but a means of ascertaining the quantity of land in the fractional quarter which is to be paid for by the purchaser. At page 514 of the opinion delivered by Justice Brewer, the Court says:

> "Nothing herein stated conflicts with Horne *v.* Smith, *supra* (159 U. S. 40); Niles *v.* Cedar Point Club, 175 U. S. 300; French-Glenn Live Stock Company *v.* Springer, 185 U. S. 47, or Kirwan *v.* Murphy, 189 U. S. 35. In the first of those cases it appeared that the survey stopped at a bayou and did not extend to the main channel of Indian River, a mile distant, and we held that the line of that bayou must be considered as the boundary of the grant; that it could not be extended over the unsurveyed land between the bayou and the main channel of Indian River; that it was a case of an omission from the survey of land that ought to have been surveyed, and that such omission did not operate to transfer unsurveyed land to the patentee of the surveyed land bordering on the bayou. In the second we held that, as the survey showed a meander line bordering on a tract of swamp or marsh lands, the grant by patent terminated at the meander line and did not carry the swamp lands lying between it and the shores of Lake Erie. In the third, it appeared that there was no body of water in front of the meandered line, and we held that that line must, therefore, be the limit of the grant, and the fact that outside the side lines extended there was a body of water did not operate to extend the grant into any portion of that body of water. In the last of these cases the complainants,

the owners of 859.38 acres as shown by the descriptions in their patents of fractional lots, claimed by reason thereof to be the owners of 1,202 acres lying between the meandered lines and a lake, and sought by injunction to restrain the Land Department from making a survey of these latter lands. We held that injunction would not lie, and that the officers of the Government could not be restrained from making a survey; that the rights of the complainants could be settled, after a survey and transfer of the legal title from the Government, by an action at law."

There are a few exceptional cases in which meander lines have been taken as boundaries, but a review and analysis of these cases demonstrate that the principle therein involved depended upon their peculiar facts which find no application to the case at bar. These cases are:

Horne *v.* Smith, 159 U. S. 40;
Niles *v.* Cedar Point Club, 175 U. S. 300;
French-Glenn Live Stock Co. *v.* Springer, 185 U. S. 47;
Security Land & Exploration Co. *v.* Burns, 193 U. S. 167, 182;
Gauthier *v.* Morrison, 232 U. S. 452;
Producers Oil Co. *v.* Hanzen, 238 U. S. 325;
Lee Wilson & Co. *v.* United States, 245 U. S. 24.

In Horne *v.* Smith, *supra*, it appeared that the survey stopped at a bayou and did not extend to the main channel of Indian River, a mile distant, and it was held

the line of that bayou must be considered as the boundary of the grant; that it could not be extended over the unsurveyed land between the bayou and the main channel of Indian River; that it was a case of an omission from the survey of land that ought to have been surveyed, and that such omission did not operate to transfer unsurveyed land to the patentee of the surveyed land bordering on the bayou.

In Niles *v.* Cedar Point Club, *supra,* it was held that, as the survey showed a meander line bordering on a tract of swamp or marsh lands, the grant by patent terminated at the meander line and did not carry swamp lands lying between it and the shores of Lake Erie.

In French Glenn Live Stock Company *v.* Springer, *supra,* it appeared that there was no body of water in front of the meander line and it was held that line must, therefore, be the limit of the grant; the fact that outside the side lines extended, there was a body of water, did not operate to extend the grant into any portion of that body of water.

In Security Land & Exploration Co. *v.* Burns, *supra,* the court refused to recognize in that case the waters of a lake as the actual boundary, but limited the lands bounded to the meander line because of:

(1) The fraudulent character of the survey;

(2) The non-existence of a lake anywhere near the spot indicated on the plat;

(3) The excessive amount of land claimed as compared with that described and stated in the patent and actually purchased and paid for;

(4) The difficulty in reaching the lake at all; which the court said at page 182:

> "* * * all go to show that the lake ought not to be regarded as a natural monument within the cases, or within the principle upon which the rule is founded, and therefore the courses and distances by which the amount of land actually purchased and paid for was determined, ought to prevail.
>
> "The non-existence of a lake anywhere near the spot indicated on the plat is a strong reason for regarding the so-called meander line as one of boundary instead of a true meander line, and when the plat itself is the result of a gross fraud, and indeed is entirely founded upon it, the reason for refusing to recognize the lake as a boundary becomes apparent."

In Gauthier *v.* Morrison, *supra,* the surveyor meandered a body of high land calling it a lake, when in truth it was not such, but was agricultural land susceptible of cultivation.

In Producers Oil Company *v.* Hanzen, *supra,* the surveyor's field notes and plat of survey showed a swamp between the true meander line of the government's fractional section of land patented, and the watercourse or lake. It was held that the meander line was the boundary and not the waters of the lake.

The court said at pages 338-339:

> "Many causes decided by this court involved construction of patents conveying public lands by reference to official surveys and plats indicating streams or other waters. (Citing authorities) * * * A review and analysis of these cases would

be tedious and unprofitable; thorough acquaintance with the varying and controlling facts is essential to a fair understanding of them. They unquestionably support the familiar rule relied on by counsel for the Oil Company that in general meanders are not to be treated as boundaries and when the United States conveys a tract of land by patent referring to an official plat which shows the same bordering on a navigable river the purchaser takes title up to the water line. But they no less certainly establish the principle that facts and circumstances may be examined and if they affirmatively disclose an intention to limit the grant to actual traverse lines these must be treated as definite boundaries. It does not necessarily follow from the presence of meanders that a fractional section borders a body of water and that a patent thereto confers riparian rights.

"In the instant case we find a survey of improved lands made at the express request of the occupant to whom they were subsequently patented; a grant from the United States specifying the exact number of acres conveyed; a positive declaration in field notes that land to the north lies outside the traverse lines; admission that excluded area contains not less than 40 acres of high ground, and evidence of large timber growing there; official plat delineating the surveyor's courses, and specifying acreage of the several subdivisions, which cannot be said to indicate a water boundary beyond possible question."

In Lee Wilson & Co. *v.* United States, *supra*, it was held that the meander lines of a survey could not be extended to include lands between such meander and a lake, for the reason that it was palpably an error in the survey and plat to follow the meanderings of a lake.

The court stated that non-existence of the lake, at the time of survey, was the reason for holding the meander as a boundary. There being no lake in existence, the owner of the land within the meander could not extend or go beyond the meander line so as to reach any lake as a boundary.

A review and analysis of the cases establishing exceptions to this general rule disclosed that the only decisions of this court, in which meander lines have been held to be boundaries, were restricted in such cases as these:

First.—Where the surveyor meandered lands where no body of water existed at all in front of the land so meandered.

Second.—Where the surveyor meandered marsh, or swamp, lands lying around a body of water, establishing in his field notes, that he meandered the marsh, or swamp, as such, and not the water course.

Third.—Where evidence showed the intention to survey a certain acreage limited by the so-called meander lines, instead of surveying to a water boundary.

Fourth.—In cases of gross fraud.

Fifth.—Where the surveyor obviously surveyed a lot to a bayou which he mistook and marked as Indian River.

An inspection of the field notes and plat of the official survey of Warren, approved and "returned to the General Land Office" (Exhibit No. 2) shows no notation of swamp or marsh lands, or unsurveyed lands beyond the meander lines and the shore of Ferry Lake, but that the

plat of survey demonstrates that the meander line contours the lake and coincides with, and borders the waters of, the lake. This situation is reflected and indicated on the plat of survey (Exhibit No. 2) and is illustrated in the diagram (Rec. 572).

So, then, when Pitts purchased the southwest fractional quarter section 10, Township 20 North, Range 16 West (Frac. SW ¼ S. 10 T 20 N. R. 16 W) from the United States, he did so on the presumption that the lands so purchased by him and granted under patent bordered on, and were bounded by, Ferry Lake, and carried riparian rights and rights of access thereto. There was nothing on the plat of survey to indicate that the intention of the government was to limit the lands granted to the meander, or that the government did not intend to convey said lands to the water of the lake as a boundary. Third parties acquiring from Pitts for valuable consideration and in good faith, according to the official plat of survey, cannot be dispossessed of said lands by the subsequent survey of Kidder, of March 28, 1917, a survey wedged in between the meander line of Warren's official plat of survey and Ferry Lake, made seventy-eight years after the Warren survey, and fifty-nine years after Pitts acquired said lands, under patent from the United States. The Government was precluded, after issuance of its patent, to cause said survey of March 28, 1917, to be made and to attempt thereby to deprive Pitts and his assigns of the lands between the meander lines (Warren's Survey) and the lake, and of the riparian rights thereto.

In Cragin *vs.* Powell, 128 U. S. 691, the Court held that (p. 699):

> " • • • when the Land Department has once made and approved a governmental survey of public lands, (the plats, maps, field notes and certificates all having been filed in the proper office,) and has sold or disposed of such lands, the courts have power to protect the private rights of a party who has purchased, in good faith, from the Government against the interferences or appropriations of corrective resurveys made by that department subsequently to such disposition or sale."

The grant of the Government to Pitts was of all the land of the Southwest fractional quarter Section ten (10), Township twenty (20) North, Range sixteen (16) West, with a boundary on Ferry Lake, according to the plat of the official survey, regardless of acreage mentioned in the patent. It was a grant of all the lands within the fractional quarter section lines and Ferry Lake, with said lake as a boundary.

In Lindsey *vs.* Hawes, 2 Black 554, at page 560 the Court says:

> "• • • It is to be remembered that the original survey of Bennett, was the survey of the Government; that it was made in 1833; that the maps, plats, certificates, and field notes were all filed in the proper office; the survey approved, and that for eleven years the Government had acted upon and recognized it as valid and correct, and above all had sold the land to Lindsey by this its own sur-

> vey, received the purchase money and given him a patent certificate, five years before any suggestion was made of this error. The money thus received by the Government has never been returned, nor do we think it would vary the rights of the parties if it had been actually tendered to him or his heirs. We are of opinion, under these circumstances, that so far as the location of the lines of that quarter section affect the question of the precise locality of Lindsey's residence, as bearing on his right to enter that fraction as a preemption, the Government was bound by the original survey of Bennett.
>
> "We do not here deny the right of the Government which has sold land by the acre at a fixed price, to make a new survey before it parts with the title, and if there is more land than was paid for, to require the deficiency to be paid before it issues a patent."

The patent to Pitts states that the southwest fractional quarter of Section ten (10) thereby conveyed contains twenty-three (23) acres. This was a manifest error in the patent; doubtless a clerical error of the clerk in the Land Office who made out the patent. The survey and plat on which the *entry was made shows fifty-five and* 88/100 (55.88) *acres in the southwest fractional quarter of Section ten* (10) *and not merely twenty-three* (23) *acres. The twenty-three* (23) *acres represented as the area of said southwest fractional quarter doubtless referred to the southeast fractional quarter of said Section ten* (10), which is shown on the plat of survey to be twenty-three (23) acres; instead of taking the acreage,

viz.: fifty-five and 88/100 (55.88) acres which the official plat of Warren shows to be the true and actual area of the southwest fractional quarter of said Section ten (10).

Kidder, Supervisor of the Surveys of the United States, who made the survey on March 28, 1917, testified to this acreage (Rec. 183) and is corroborated by Crawford, a surveyor, who testified in this case (Rec. 240) and also by Clements, Assistant Surveyor to Kidder (Rec. 275).

The acreage sought to be recovered by the Government in this case is eighty-five and 22/100 (85.22) acres. The entire acreage between the meander of the southwest fractional quarter and Ferry Lake amounts to Two hundred forty-eight and 87/100 (248.87) acres (Rec. 128, 129), showing about four times more land between the meander lines of Warren's survey and Ferry Lake and the acreage conveyed to Pitts.

This excessive acreage is not so impressive as to impute fraud, or gross mistake in Warren's survey.

In Mitchell *vs.* Smale, 140 U. S. 406, a small fractional lot of four and one-half (4½) acres meandered on a lake was held to include an unsurveyed point running beyond the meander line into the lake, containing twenty-five (25) acres; and the subsequent survey by the Land Department of the 25 acres (patented to another purchaser) was held invalid. The Court said at page 412 of that case:

"We think it a great hardship, and one not to be

endured, for the government officers to make new surveys and grants of the beds of such lakes after selling and granting the lands bordering thereon, or represented so to be. It is nothing more nor less than taking from the first grantee a most valuable, and often THE most valuable part of his grant. Plenty of speculators will always be found, as such property increases in value, to enter it and deprive the proper owner of its enjoyment; and to place such persons in possession under a new survey and grant, and put the original grantee of the adjoining property to his action of ejectment and plenary proof of his own title, is a cause of vexatious litigation which ought not to be created or sanctioned. The pretence for making such surveys, arising from the fact that strips and tongues of land are found to project into the water beyond the meander line run for the purpose of getting its general contour, and of measuring the quantity to be paid for, will always exist, since such irregular projections do always, or in most cases, exist. The difficulty of following the edge or margin of such projections, and all the various sinuosities of the water line, is the very occasion and cause of running the meander line, which by its exclusions and inclusions of such irregularities of contour produces an average result closely approximating to the truth as to the quantity of upland contained in the fractional lots bordering on the lake or stream. The official plat made from such survey does not show the meander line, but shows the general form of the lake deduced therefrom, and the surrounding fractional lots adjoining and bordering on the same. The patents when

issued refer to this plat for identification of the lots conveyed, and are equivalent to and have the legal effect of a declaration that they extend to and are bounded by the lake or stream. Such lake or stream itself, as a natural object or monument, is virtually and truly one of the calls of the description or boundary of the premises conveyed; and all the legal consequences of such a boundary, in the matter of riparian rights and title to land under water, regularly follow."

In Johnson *vs.* Johnson, 14 Idaho 561; 24 L. R. A. (N. S.) 1240, a tract of land, 86.06 acres, under patent, carried 143 acres.

In Barringer *vs.* Davis, 141 Iowa 428; 120 N. W. 65, 68, 69, a tract carried 100 acres between the meander and the lake. The land described in the patent carried 80 acres, more or less.

The evidence shows that the survey of Warren was "especially good" and that the lands omitted by the survey "practically of no value" (Rec. 187).

Warren's survey shows that township twenty (20) contained 10,328.09 acres and that the total acreage claimed to be omitted between his meander and Ferry Lake aggregates 617.21 acres (Rec. 120); of this amount 248.87 acres is in front of the southwest fractional quarter Section ten (10) (Rec. 128, 129).

In several other actions brought by the Government to recover acreage abutting on Ferry Lake, alleged to have been omitted from the Warren survey by manifest error, the Master and the District Court found for the

Government. The Circuit Court of Appeals for the Fifth Circuit in the several consolidated cases reported in Greene *vs.* United States, 274 Fed. 145, and Lane *vs.* United States, 274 Fed. 290, reversed the trial court and the Master on the principles of law for which we contend in this case. In the Greene case the fractional section in dispute called for 147.25 acres and the land claimed by the Government outside of the meandered acreage, sixty-five and 77/100 (65.77) acres. The case at bar is the only case in which the Government's contention was upheld by the Circuit Court of Appeals,—yet we earnestly contend that the same principle of law is involved in all of these cases brought by the Government to recover acreage abutting on Ferry Lake alleged to have been omitted from the Warren survey. It is significant to note that in the opinion in the Lane case *supra*, at page 293, in referring to cases relied upon by the Government as sustaining its contention in the case at bar, the Circuit Court of Appeals says:

> "* * * These cases are relied upon by the government, but in our opinion they are inapplicable to the facts under consideration. In none of the cases cited on the government's briefs is the rule stated in Mitchell *v.* Smale overruled or even modified; but, on the contrary, in several of them that case is cited with approval.
>
> Here the water course was in existence and was actually meandered. There is no suspicion or suggestion that Warren's survey of the lands in litigation was fraudulent. That part of his survey which is in question in these cases was made with a fair

degree of accuracy, and for the purposes of computing the acreage and of showing the sinuousities of Ferry Lake as a boundary. It is not impeached by the fact that a subsequent survey, made with great minuteness because of the discovery of oil, disclosed comparatively slight variations from the established boundary."

In the Greene case *supra*, the court at page 149 of its opinion says:

"* * * The question therefore is: Did the evidence in this case show that there was such a mistake in the Warren survey that the government can now have the same corrected against the present owners of the land conveyed by its patents.

These patents respectively conveyed the land mentioned therein 'according to the official plat of survey of said lands returned to the General Land Office by the Surveyor General.' (This was the Warren Survey.) This constituted such plat a part of the deed, 'and controls, so far as limits are concerned, as if such descriptive features were written out upon the face of the deed or the grant itself.' Cragin *v.* Powell, 128 U. S. 691, 9 Sup. Ct. 205, 32 L. Ed. 566; McIver's Lessee *v.* Walker, 9 Cranch. 173, 177, 3 L. Ed. 694; Jefferis *v.* East Omaha Land Co., 134 U. S. 178, 194, 195, 10 Sup. Ct. 518, 33 L. Ed. 872; Chapman et al. *v.* St. Francis Levee District, 232 U. S. 186, 197, 34 Sup. Ct. 297, 58 L. Ed. 564."

Kidder says that Warren's survey is "especially good" (Rec. 187) and was in perfect agreement with his actual retracement of survey of March 28, 1917 (Rec. 71,

73, 76, 91, 101, 187) and that the land in controversy was of little value (Rec. 187) and "practically valueless" (Rec. 202).

Therefore, if the Warren survey was "especially good" (Rec. 108, 202) while the lands were of little value when surveyed some eighty years ago, that survey still remains correct and "practically good", for neither lapse of time nor improvements in and inventions of new appliances in surveying, nor expert studies with instruments of precision can convert an accurate survey into an inaccurate one.

Using an old-time open compass and an iron chain, Warren followed the waters of the lake in meandering its sinuosities as he found conditions at the time. His survey was not made in one day, nor in one week, but it covered a period of over three months, that is, January, February and March, 1839, when the waters of the Lake, at that season of the year, were customarily at their highest stage. This stage of the water went frequently to 180 feet elevation (Rec. 179, 180, 181).

All the acts performed by Warren in surveying the land in Township twenty (20), and in southwest fractional quarter Section ten (10) must be inferred and presumed to have been lawfully done.

In Bank of U. S. *vs.* Dandridge, 12 Wheat. 64, 70:

> "* * * It (the law) will presume that all things are rightly done, unless the circumstances of the case overturn this presumption, according to

the maxim, omnia presumuntur rite et solemniter esse acta, donec probetur in contrarium."

United States *vs.* Budd, 144 U. S. 154, 161;
Smelting Co. *vs.* Kemp, 104 U. S. 636, 643.

In the light of these facts and the conditions prevailing, Warren, when he made his survey, either did not consider the land of sufficient value and importance to survey, or in running his meander he thought he was approximately near the water's edge of Ferry Lake.

The court, in Grand Rapids and Ind. R. R. Co. *vs.* Butler, 159 U. S. 87, dealing with a similar situation, said at page 95:

"We have no doubt upon the evidence that the circumstances were such at the time of the survey as naturally induced the surveyor to decline to survey this particular spot as an island. There is nothing to indicate mistake or fraud, and the government has never taken any steps predicated on such a theory; and did not survey the so-called Island No. 5 until twenty-five years after the survey of 1831, and nearly twenty years after that of 1837."

In Kean *v.* Calumet Canal & Improvement Company, 190 U. S. 452, at pages 459-460:

"* * * It would seem, to be sure, that the settled understanding of the land department has been that in cases like the present the meander line marked the limit of the grant. But probably the cases are comparatively rare in which that understanding was acted on by an attempt subsequently

to convey the land under water on the further side of the line at dates before the transactions with which we have to deal. The title to such land was not considered of much importance in the early days or worth the trouble of an independent survey. See Newsom *v.* Pryor, 7 Wheat. 7, 11. The United States was more anxious for settlers than for revenue from that source. It is not necessary to consider how we should decide the case with our present light if the question were a new one. It is not new. For twelve years the decisions in Hardin *v.* Jordan and Mitchell *v.* Smale have stood as authoritative declarations of the law."

And at page 461:

"The resurvey by the United States in 1874 does not affect the Calumet Company's rights. As the United States already *had conveyed* the lands, it had no jurisdiction to intermeddle with them in the form of *second survey.*" (Italics ours.)

In the light of the facts of the case at bar, it was too late for the United States to have caused to be made a resurvey of the southwest fractional quarter of Section ten (10), and to claim the land between the meander line of Warren's survey and Ferry Lake, as it had parted with title to said lands to Pitts, "according to the plat of the official survey of said land returned to the General Land Office by the Surveyor General," and from whom the defendants acquired, through mesne conveyance, the land so granted by the United States to Pitts in reliance upon the verity of its plat of survey.

The defendants are not only protected by said plat, but also by the admissions and declarations of the Commissioner of the Land Office in his letter to Hon. N. C. Blanchard, February 8, 1897 (Rec. 574), hereinafter referred to, and by the statement in letter of the Director, George Otis Smith, November 6, 1908, to the Secretary of the Interior (Rec. 577) in which it is stated that the only lands remaining in the federal ownership in the neighborhood of the oil fields are as follows: (Giving a list of land) that in Township twenty (20) North, Range sixteen (16) West, being the NE ¼ of the SE ¼, Section 1, and the SW¼, Section 3 (Rec. 579),—all of which clearly shows that the Government, prior to this suit, had no claim of ownership to lands in Township twenty (20), other than those referred to in the said letter of the Director to the Secretary of Interior, and had considered the title to lands involved herein to have passed out of the Government to Pitts, under its patent issued to him, according to its official plat of survey.

POINT TWO.

Mistake or fraud in survey on which patent is based must be specifically averred and clearly proven.

Assignment of Errors Nos. 4 and 5 (Rec. 727).

A mass of testimony and documentary evidence was adduced and offered by the plaintiff, appellee herein, tending to assail and impair the integrity of the Warren

survey. The admissibility of such evidence was timely objected to by the defendants (Rec. 51, 54) and exceptions taken to the action of the Court in overruling said objections (Rec. 727-729). The documentary evidence offered was in the nature of maps and letters from the Land Department to Kidder, Supervisor, and is set out at pages 51 to 54 of the Record.

The gist of the objections to the admissibility of such evidence, so offered and admitted over the objection of the defendants, condensed and summarized, follows, to-wit:

First.—That the plaintiff, the United States, did not prosecute this suit on the theory of mistake, gross error or fraud, committed by Warren, in making his survey in 1839.

Second.—That such mistake, or error, was not pleaded by the plaintiff; consequently evidence could not be admitted to show the same in a collateral attack.

Third.—Even had there been mistake or fraud, committed by Warren, in the making of his survey, proof showing this could not affect or impair the rights of Pitts, and of his assigns, after patent had issued to him by the government for the lands described therein, predicated on the plat of its official survey; or by any act of the government, or by the subsequent survey of Kidder of March 28, 1917, or by any other subsequent survey. Proof to establish fraud, error or mistake is not admissible in a collateral attack on such survey, especially so

in the absence of any allegations setting forth facts upon which such fraud, mistake or gross error is founded.

Fourth.—That if such evidence was admissible, the burden was upon the Government, the plaintiff, to sustain the charge of fraud, mistake and error by clear and convincing proof, even though doing so would require the proof of a negative.

This, the Government plaintiff in this suit, has failed to do.

Fletcher *vs.* Peck, 6 Cranch. 87;

Maxwell Land Grant Case, 121 U. S. 325, 379, 381;

Colorado Coal & Iron Co. *vs.* U. S., 123 U. S. 307, 316;

United States *vs.* Winona RR Co., 165 U. S. 463, 475;

United States *vs.* Detroit Lmbr. Co., 200 U. S. 321;

United States *vs.* Iron-Silver Mining Co., 128 U. S. 673, 676, 677, 680;

United States *vs.* Detroit Lmbr. Co., 131 Fed. 668;

United States *vs.* Stinson, 197 U. S. 200;

32 Cyc. 1056, title, PUBLIC LANDS, subtitles "Pleading" and "Evidence".

Even though Warren committed error, or mistake, or fraud, in his survey, and even though Pitts participated in such fraud, or aided in the commission of such error with Warren in making such survey, third persons

acquiring the lands from Pitts, who purchased relying on the plat of the official survey filed in the General Land Office and approved by the Surveyor General, for valuable consideration, without notice, and in good faith, are not affected; but are protected from any attack on the title so acquired, whether by a direct or a collateral attack thereon by the Government as to such survey and the patent issued thereon.

This rule is so well established that we deem it sufficient to cite only a few of the authorities supporting the proposition:

United States *v.* B. & M. RR. Co., 98 U. S. 334, 342;

United States *vs.* Marshall Silver Mining Co., 129 U. S. 579, 588;

United States *vs.* Clark, 200 U. S. 601, 608;

State *vs.* Hackley, 124 La. 854, 861.

In Lindsey *vs.* Hawes, 2 Black 554, it was held, if the surveyor makes an error in his return of a quantity of land, or, if the quantity is erroneously stated in the patent, this will not affect the grant. The grantor will take according to the boundaries of the land described.

The quantity of land between the meander of Warren's survey and Ferry Lake, as disclosed and described by the Kidder survey of March 28, 1917, was not so excessive as to infer or presume fraud. The land was, at the time of Warren's survey, of little value. The topography of the country was such that he might have thought that he was sufficiently near the lake, or that the

land was not of sufficient value to be surveyed. The 14 angle points of the Warren survey are not over on an average 2500 feet from the shores of Ferry Lake, being less than one-half a mile. The shortest distance is 165 feet and the longest distance 3060 feet (Rec. 140, 141, 142).

The Government witness, Kidder, Supervisor of the Survey, testified that his resurvey of March 28, 1917, was "in perfect agreement" with that of Warren of 1839, and that he could not explain the reason of Warren omitting from his survey the area of land between the meander of the southwest fractional quarter section ten (10), Township twenty (20) North, Range sixteen (16), and Ferry Lake. He, however, testified that Warren committed a manifest error in his survey without giving any explanation for the reason on which he based this opinion. In fact, he stated he could give none. (Rec. 148.)

POINT THREE.

The Government is estopped to assert ownership at this late date.

Assignment of Error 8 (Rec. 729).

It is submitted there was error by the Court in not having sustained the equities pleaded against the Government in its attempt to recover the lands in controversy, or any of the lands, between the meander line of Warren's survey and Ferry Lake.

More than seventy-eight years have elapsed since Warren made his survey in 1839 and the time that *Kidder* made *his survey* of March 28th, 1917, and more than fifty-seven years have elapsed since Pitts received his patent from the Government to the southwest fractional quarter, Section ten (10), Township twenty (20) North, Range sixteen (16), "according to the plat of the official survey of said land returned to the General Land Office by the Surveyor General."

It would appear that since third parties (the defendants) have acquired the property and rights thereon for a valuable consideration, in good faith, without notice, relying upon the accuracy and integrity of the patent and the official plat of survey,—they should be protected. Especially is it true in this case, where prior to the institution of this suit the Government particularly disclaimed rights in any lands lying between the Warren meander and Ferry Lake (referring to letter of S. L. Lamereaux, Commissioner of the Land Office, to Senator N. C. Blanchard, February 8, 1897, Rec. 574, 576).

The Government, the plaintiff herein, at all times considered the lands between the meander of the plat of survey of Warren and Ferry Lake as having passed to Pitts, under patent to him, October 1, 1860. This is made manifest by the correspondence between Senator N. C. Blanchard and the Commissioner of the General Land Office, prior to the date that the Jeems Bayou Fishing and Hunting Club acquired the lands in controversy, and prior to the date that the Producers Oil Company

secured a mineral lease from said company to explore the lands for oil and gas. This letter which we consider of great importance in our case is dated February 8, 1897, and will be found at page 575 of the Record. It reads in part as follows:

> "An examination of the record shows that the public lands in Sections 9 and 10 represented upon the official plats, and in front of which the lands in question have formed, have been entered by individuals, and patent has issued for some of the land. The official plat shows no unsurveyed land in the locality indicated by the map accompanying Mr. Flournoy's letter, *but that Ferry Lake was duly meandered and the surveys closed thereon,* and any land which may have formed between the meander and shore line of the lake since the survey and disposition of the fractional tracts bordering upon the lake *is not subject to survey and disposal as public land of the United States, under existing laws,* and in this connection I invite your attention to the U. S. Supreme Court decision in the case of Hardin *v.* Jordan, 140 U. S. Reports 371, also to the decision contained in the same reports on page 413, in the case of Mitchell *v.* Smale, where the following definition of an official plat of survey is given, viz.: * * *." (Italics ours.)

The doctrine announced in the letter of the Commissioner is that contended for by the defendants; *id est,* that the Government intended the lake to be the boundary of the fractional quarter sections, and not the meander. The admission of the Commissioner is clear and unequivocal.

And again, the Government made no claim to lands in township twenty (20), other than those reflected in a letter of date November 6, 1908, to the Secretary of the Interior (Rec. 509, 577) which is as follows:

"November 6, 1908.

The Honorable,

The Secretary of the Interior.

Sir:—

In connection with my letter of October 24 on the subject of the wanton waste of natural gas in the Caddo oil fields in northwestern Louisiana:

I have the honor to advise you that a search made by the General Land Office shows that lands remaining in Federal ownership in the neighborhood of this oil field are as follows:

(Giving list of land in other sections.)

Township 20 North, Range 16 West: NE. ¼, SE. ¼, Sec. 1; SW. ¼, SW. ¼, Sec. 3 (for S. ½ SW. ¼, Sec. 3, See "C", August 24, 1905). (Rec. 572, 579).

* * * * * * *

I have the honor to further recommend that all the lands described herein be withdrawn from entry pending the investigation now under way as to their value for oil and gas and also that all public lands in Texas within a width of two sections from the Louisiana line opposite the tract between Townships 18 and 20 in Louisiana be similarly withdrawn from entry.

Very respectfully,

GEO. OTIS SMITH, *Director.*"

It will be noted that in that letter the Government did not claim any land in Township twenty (20), other than the NE. ¼ of the SE. ¼ of Section 1, the SW. ¼ of the SW. ¼ Section 3, (for S. ½ of the SW. ¼, Sec. 3, see "C", August 24, 1905).

These letters show that the Government did not claim these lands in controversy but recognized that they had passed, under patent, to Pitts.

It is obvious that the Government made no claim or asserted any ownership to any such lands between the meander and the lake in Township twenty (20), other than those mentioned in the letter of the Director to the Secretary of the Interior. This letter, and the one of the Land Commissioner to Senator Blanchard, by the Land Department of the Government, having control and disposition of its public lands, is equivalent to a declaration that the Government did not claim the land between the meander of Warren's survey and Ferry Lake in front of the southwest fractional quarter of Section ten (10), or to any other land in that Township, except as to such referred to in the list of lands of the Director. It was upon these circumstances, and particularly upon the construction given to the patent issued to Pitts, and of the plat of survey of Warren, that the Jeems Bayou Fishing and Hunting Club purchased said lands in 1905, and from which company the Producers Oil Company, October, 1910, secured a mineral lease to explore and develop said lands for oil and gas, absolutely relying on the faith of the patent of the Government and

its plat of survey, and of its disclaimer and disavowal to any land in the southwest fractional quarter of Section ten (10).

The disposition of the lands of the United States, under Act of Congress, is vested in the Land Department. It is an agent of the Government acting within the scope of the authority vested in it by statute. Its acts are binding and valid, as to the subject matter falling within the scope of its authority and jurisdiction, and individual rights will not be disturbed in the exercise of that discretion and duty.

United States *vs.* California Land Co., 148 U. S. 31, 43;

Lindsey *v.* Hawes, 2 Black 554.

Lapse of time and staleness of the Government equities, in the facts of this case, should debar it, on equitable grounds, from recovering the lands in controversy. This estoppel is pleadable against it as it would be against an individual.

This court has held, in United States *vs.* Stinson, 197 U. S. 200, 204:

> "While the Government, like an individual, may maintain any appropriate action to set aside its grants and recover property of which it has been defrauded, and while laches or limitation do not of themselves constitute a distinct defense against it, yet certain propositions in respect to such an action have been fully established.
>
> ***First,*** the respect due to a patent; the presump-

tion that all the preceding steps required by law have been observed before its issue; the immense importance and necessity of the stability of titles depending upon these official instruments demand that suits to set aside or annul them should be sustained only when the allegations on which this is attempted are clearly stated and fully sustained by proof. (Citing authorities.)

Second.—The Government is subjected to the same rules respecting the burden of proof, the quantity and character of evidence, the presumptions of law and fact, that attend the prosecution of a like action by an individual. 'It should be well understood that only that class of evidence which commands respect, and that amount of it which produces conviction, shall make such an attempt successful.' Maxwell Land-Grant case, *supra* (121 U. S. 325), at p. 381; United States *v.* Iron Silver Mining Co., 128 U. S. 673, 677; United States *v.* Des Moines &c. Company, *supra* (142 U. S. 510), at p. 541.

Third.—It is a good defense to an action to set aside a patent that the title has passed to a *bona fide* purchaser, for value, without notice. And, generally speaking, equity will not simply consider the question whether the title has been fraudulently obtained from the Government, but also will protect the rights and interests of innocent parties. United States *v.* Burlington & Missouri River Railroad Company, 98 U. S. 334, 342; Colorado Coal Company *v.* United States, *supra* (123 U. S. 307), at p. 313—a case in which, as here, suit was brought to set aside land patents on the ground that they had been obtained by fraud, and in which we said:

'But it is not such a fraud as prevents the passing of the legal title by the patents. It follows that to a bill in equity to cancel the patents upon these grounds alone the defense of a *bona fide* purchaser for value without notice is perfect.'

United States *v.* Marshall Mining Company, 129 U. S. 579, 589; United States *v.* California &c. Land Company, 148 U. S. 31, 41; United States *v.* Winona &c. Railroad Company, 165 U. S. 463, 479."

The above authorities relate to the cancellation of patents obtained by fraud. The principle which we contend applies in our case is that the Government had notice of the status of the lands between Warren's survey and the lake as far back as 1897, and also in 1908, and had not taken steps to correct its survey upon which the patent issued to Pitts was based; and, therefore, it cannot now because of its laches and negligence avail itself of any right to claim said land, as third parties have acquired the land from Pitts in good faith, and for a very substantial consideration, in reliance upon the plat of said survey.

Aside from this, the defendants were led to believe that the land between the meander and the lake was the property of Pitts, acquired by the Jeems Bayou Fishing and Hunting Club by the judgment rendered in that suit heretofore referred to, entitled "Jeems Bayou Fishing and Hunting Club *vs.* The Board of Commissioners of the Caddo Levee District," wherein the land between the meander of the southwest fractional quarter section

ten (10) and the lake was adjudged to be a part of the land acquired by Pitts, under patent, from the Government.

In the case of United States *v.* Chandler-Dunbar, 152 Fed. 25, 40 (affirmed in 209 U. S. 447), the Circuit Court of Appeals for the Sixth Circuit said:

> "* * * Following the ancient common-law maxim, '*nullum tempus occurrit regi,*' it has been settled as the rule here that the United States is not affected in respect to its pursuit of remedies by mere delay or general statutes of limitation. But when it sues in equity as a private suitor on a cause of action relating to its proprietary interests, it is held to be affected by those equities which are recognized as fundamental in controversies between private parties. And why should this not be so? It derogates from the dignity and character of the Government to suppose that, formed as it is to secure impartial justice between individuals, it may nevertheless in the conduct of its own affairs, without regard to the principles it represents, perpetrate upon its citizens wrongs which it would promptly condemn if practiced by one of them upon another."

The above is quoted with approval in State of Iowa *vs.* Carr, 191 Fed. 257, at page 268.

The equitable claims of a State, or the United States, appeal to the conscience of a Chancellor with the same, but with no greater, or lesser, force than would those of an individual under like circumstances.

> United States *v.* California & Oregon Land Co., 148 U. S. 31, 41;

United States *v.* Stinson, 125 Fed. 907, 910 (affirmed 197 U. S. 200);

United States *v.* Detroit Timber & Lumber Co., 131 Fed. 668 (affirmed 200 U. S. 321);

State of Iowa *v.* Carr, 191 Fed. 257, 266 (C. C. A.);

United States *v.* Midway Northern Oil Co., 232 Fed. 619, at p. 631;

United States *v.* Diamond Coal & Coke Co., 254 Fed. 266, at p. 268;

Hemmer *v.* United States, 204 Fed. 898 (affirmed in U. S. *v.* Hemmer, 241 U. S. 379);

United States *v.* Pa. & L. E. Dock Co., 272 Fed. 839, at p. 848.

In State of Michigan *v.* Jackson L. & S. R. Co., 69 Fed. 116, in passing on the question of equitable estoppel pleaded against a State for having slept on its rights for a long period of time and then asserting rights to certain lands, the court said at page 121 of its opinion:

> "It is a rule devised for the protection of the public that the state shall not be held responsible for the acts of its agents when done in excess of his powers. Assuming, for the moment, that there was an excess of power by the officers of the state, what is the application of the above-stated rule to the circumstances as we now find them? It is a fit rule to apply to a transgression which the state has not condoned; but it has no application to a case in which no question of morals is involved, but where a course of action has been pursued with the knowledge and acquiescence of the state in the manage-

ment and disposition of its property interests for so long a time that the public have been led to reasonably believe that they may act upon the assumption that what has been done with the sanction of the state was validly accomplished. To apply the rule as the state asks us to apply it here would be to pervert it to an agency for mischief and wrong. The public have supposed, and had a right to suppose, that they could deal with the lands in the state upon the status given them by the action of the public officials of the state and of the United States, without dissent from either government. In a justly-inspired confidence in the integrity and validity of this public action, several hundred thousand acres of land in the state have been bought from the United States by citizens who are *bona fide* purchasers, and whose titles are mere nullities if this contention of the state can be maintained. It was for the public interest that the status of the lands should be settled, and that they should not remain as stumbling-blocks in the progress of the improvement of the country. The state cannot be permitted to say that it has slept during all this period, and abandoned its sovereign duties to its citizens, as well as its reciprocal moral obligations to the government which had made to it so magnificent a gift. The state is not to be regarded as a mere machine, incapable of intelligence or conscience. And, while it is necessary and right to restrain or annul the unauthorized acts of its agents by which its interests might be impaired, yet there must come a time, after long-continued acquiescence in public action with knowledge of it, when, in the interest of its citizens, the state itself

shall be precluded from despoiling others by the assertion of its original rights."

The situation in the facts of this case reflects strongly the equities of the defendants against the Government. It brought about a condition whereby the defendants, as third persons, had full faith that they were acting on the construction of a patent to Pitts and the official plat of survey; and also as the solemn declaration and disavowal of the agents of the United States, General Land Office of the Interior Department, that the lands in question had passed to Pitts under his patent. It is respectfully submitted that the Government, having quietly acquiesced in the possession of, and claim of, title to those lands by defendants,—it is now equitably estopped from taking from defendants the lands and improvements placed thereon, and to recover the value of the oil produced therefrom.

The principle of estoppel has its foundation in a wise and salutary policy. It is the means of repose. It promotes fair dealing. It cannot be made the instrument of wrong or oppression, and it often gives triumph to right and justice where nothing else known to jurisprudence can by its operation secure these ends. Like the statute of limitation, it is a conservator and without it society could not well go on.

Daniels *vs.* Tearney, 102 U. S. 415, 420;
Galliher *vs.* Cadwell, 145 U. S. 368, 373.

CROSS APPEAL.

POINT FOUR.

The entry of defendants on the land and extraction of oil therefrom was in good faith.

The United States, referred to as plaintiff, appeals from that part of the decree of the Circuit Court of Appeals which allowed the defendants the deduction of costs of drilling and equipping wells and expenses incurred in their maintenance and operation.

This suit is one brought in equity and not in law.

These expenses and costs are just, fair and consistent with justice; and, in event it should be decreed by this court that the United States is the owner of the lands in question and entitled to recover the value of the oil and gas extracted from said lands, the defendants should undoubtedly be allowed the expense of production, *i. e.*, the cost of drilling, equipping, maintaining and operating the wells on said property.

The evidence shows that the entry of the oil company on the lands, and its extraction and removal of the oil and gas therefrom, was in good faith, in the belief and in reliance that the title to said land was legally in the Jeems Bayou Fishing and Hunting Club, acquired by it from Stephen D. Pitts to whom patent had been issued by the United States according to its official plat of survey, and on the assurance of the Commissioner of the General Land Office that the United States claimed no land in the southwest fractional quarter Section ten (10),

and that the lands between the Warren meander and Ferry Lake had passed to Pitts, patentee, under the doctrine of Hardin *v.* Jordan, 140 U. S. 371, and Mitchell *v.* Smale, 140 U. S. 413, as stated in the letter to Senator Blanchard, dated February 8, 1897 (Rec. 575), heretofore referred to. Defendants also relied on the letter of George Otis Smith, dated November 6, 1908, to the Secretary of the Interior (Rec. 577) in which was stated that the only land remaining in the Federal ownership in Township twenty (20) North, Range sixteen (16) West, was the northeast quarter (NE. ¼) of southeast quarter (SE. ¼) Section one (1), and the southwest quarter (SW. ¼) of southwest quarter (SW. ¼) Section three (3) (Rec. 579), and on the judgment of the District Court of the Parish of Caddo, State of Louisiana, dated March 11, 1911, whereby the Jeems Bayou Fishing and Hunting Club was adjudged to be the owner of said land in the suit entitled "Jeems Bayou Fishing and Hunting Club *v.* The Board of Commissioners of the Caddo Levee District" (Rec. 717).

Evidence shows that when the patent to Pitts was issued, the land in controversy was of very little, if any, value; that the title passed from Pitts through intermediate title holders to the Jeems Bayou Fishing and Hunting Club and that this Club erected improvements on the land; and that it was only through the expenditures by defendant oil companies of $100,000.00 (in reliance upon the patent, possession, letters and proceedings hereinbefore referred to) that the land was proven to be of any substantial value.

Under all these circumstances, defendants acted in good faith, and having acted in good faith, should be allowed expenses and costs for the production of oil from the land in controversy.

In United States *v.* California & Oregon Land Co., 148 U. S. 31, at page 45, this Court in determining the question as to whether or not the Land Company was a *bona fide* purchaser stated:

> "Can it be that they must be adjudged derelict in diligence because they did not make a personal examination of the road, and determine for themselves whether it was in its entire length completed so as to satisfy all of the terms of the grant? If a patent from the government be presented, surely a purchaser from the patentee is not derelict, and does not fail in such diligence and care as are required to make him a *bona fide* purchaser, because he relies upon the determination made by the land officers of the government in executing the patent, and does not institute a personal inquiry into all the anterior transactions upon which the patent rested."

The measure of damages for the value of the oil extracted (*i. e.,* whether the cost of drilling, equipping, maintaining and operating wells through which the oil is brought to the surface and reduced to possession should be deducted), is a question to be determined by the Federal Court, sitting in Louisiana, according to the laws of the State of Louisiana.

Jackson *vs.* Ludeling, 99 U. S. 513;
New Orleans *vs.* Gaines, 131 U. S. 191.

The law of Louisiana is that one who in good faith (or even in legal bad faith technically, though in moral good faith) produces the oil or gas from the land of another is liable only for the difference between the value of the mineral so produced and the cost of producing it; that is, the cost of drilling, equipping, maintaining and operating wells.

> "The real value of the gas used by the plaintiff is its value in place. But the plaintiff was not the owner of the gas at that time, and the record does not disclose any method by which the value thereof might be arrived at. The only method for measuring such value suggested is to ascertain the value of the gas after it was brought to the surface and reduced to possession and then subtract the cost of reducing it to possession."
>
> Cook *vs.* Gulf Refining Co. of Louisiana, 135 La. 609, 617.

The general rule for the measurement of damages for the removal of oil and gas taken, is to ascertain the value of the oil when brought to the surface and deduct therefrom the cost of drilling wells and the expense of maintaining and operating such wells, as was done in this case.

Barnes *v.* Winona Oil Co., 200 Pac. 985;

United States *v.* McCutchen, 238 Fed. 575, at p. 593;

United States *v.* Midway Northern Oil Co., 232 Fed. 619, at page 631;

Zelma Oil Co. *v.* Nemo Oil Co., 203 Pac. 203;

Guffey *v.* Smith, 237 U. S. 101, at page 119;

Martel *v.* Jennings, 114 La. 351, 360;

Bender *v.* Brooks, 103 Tex. Sup. Ct. 329; 127 S. W. 168, Ann. Cas. 1913-A 559;

Omaha Smelting Co. *v.* Tabor, 13 Col. 41, 21 Pac. 926, 5 L. R. A. 236;

Williamson *v.* Jones, 38 L. R. A. (W. Va.) 694, 702, 708;

Colo. Cent. Consol. Min. Co. *v.* Turck, 70 Fed. 294, 301;

Canal Bank *v.* Hudson, 111 U. S. 80;

27 Cyc. 639.

The Master in his findings stated (Rec. 635):

"* * * My conclusion is that defendants herein are innocent of any intent to do wrong and therefore the costs of extracting the oil and other minerals should be allowed, this embraces the cost of drilling and completing the wells and the cost of administering same in order to deliver the oil at the surface for delivery into commerce."

This finding was affirmed by the District Court (Rec. 674). The Circuit Court of Appeals in its opinion (Rec. 723, at page 724) stated they did not think under the circumstances disclosed that the defendants were liable as wilful trespassers for the taking of oil from the land in question. After entering into an interesting discussion of the facts involved, they conclude:

"* * * The evidence adduced was consistent with the conclusions that the drilling of wells on the land in question and the taking oil therefrom were unaccompanied by any intention on the part of the defendants, or either of them, to violate any law or to do any wrongful act, and that the defendants

acted under a mistake of fact as to the location of the boundary of the land described in the lease, and without knowledge of the facts which require the conclusion that title to the land in question has not passed out of the United States. On the facts disclosed the court properly ruled that the measure of liability for the oil taken from the land in question was the value of that oil, less the cost of producing it. United States *v.* St. Anthony R. Co., 192 U. S. 524."

CONCLUSION.

We respectfully submit that the Government should not be permitted at this late date to assert title to the lands in question, after the value of said lands has been proven by defendants by the expenditure of large sums of money; and that the judgment of its district court and the Circuit Court of Appeals should be reversed. In any event, if this court should not reverse these judgments, the Government should not be allowed the value of the oil extracted from the lands in controversy without deduction for the costs and expenses of drilling, maintaining and operating the wells on the property.

HAMPDEN STORY,
HARRY T. KLEIN,
Solicitors for Producers Oil Co. and The Texas Company.

ELIAS GOLDSTEIN,
H. C. WALKER,
Solicitors for Jeems Bayou Fishing and Hunting Club.

INDEX.

	Page.
The pleadings	1
The facts	4
Assignments of error	18
Argument	19
It is submitted that if this court, under the circumstances disclosed by this record, should now adjudge that the patent under which the defendants claim passed title to the water's edge, the effect will necessarily be to overrule a long line of authorities	19
It is, of course, not disputed that the general rule is that a lake or water course shown on the plat of survey is the real boundary and that a patent conveys title to the water's edge, and not merely to the meander line	21
The Government is in no way seeking to cancel the patent under which the defendants claim. The question is simply one of determining at what line the title under that patent stops. Under the allegations of the Government's bill proof was therefore admissible to determine where the true boundary line is.	23
There is no merit in the contention that the Government is estopped to prosecute this suit by reason of the letter written by the Commissioner of the General Land Office to Senator Blanchard or by reason of the letter of the Director of the Geological Survey to the Secretary of the Interior	24
The defense of laches is not available	24
The court of appeals was wrong in allowing the defendants credit for the cost of drilling the well	25

CASES CITED.

Chapman & Dewey v. *St. Francis*, 232 U. S. 186	20
French-Glenn Live Stock Co. v. *Springer*, 185 U. S. 47	19, 24
Graham v. *Gill*, 223 U. S. 463	24
Hall v. *Abraham*, 44 Ore. 477	25
Hardin v. *Jordan*, 140 U. S. 371	24
Horne v. *Smith*, 159 U. S. 40	19, 24
Kirwan v. *Murphy*, 189 U. S. 35	24
Lee Wilson & Co. v. *United States*, 245 U. S. 24	21, 24
Llynvi Co. v. *Brogden*, L. R. 11 Eq. 188	25
Martin v. *Porter*, 5 Mees. & W. 351	25
Mitchell v. *Smale*, 140 U. S. 406	22, 24
Morgan v. *Powell*, 3 Q. B. 278	25
Niles v. *Cedar Point Club*, 175 U. S. 300	19, 24

	Page.
Producers Oil Co. v. *Hanzen*, 238 U. S. 325	6, 20
Railroad Co. v. *Schurmeir*, 7 Wall. 272	21
St. Clair v. *Cash Gold Min. & Mill. Co.*, 9 Colo. App. 235	25
Security Land & Exp. Co. v. *Burns*, 193 U. S. 167	20, 23
United States v. *McCutchen*, 238 Fed. 575	25
United States v. *Midway Northern Oil Co.*, 232 Fed. 619	25
United States v. *New Orleans Pac. Ry. Co.*, 248 U. S. 507	24
United States v. *St. Anthony R. R. Co.*, 192 U. S. 524	25
Utah Power & Light Co. v. *United States*, 243 U. S. 389	24

In the Supreme Court of the United States.

OCTOBER TERM, 1922.

JEEMS BAYOU FISHING AND HUNTING Club, Producers Oil Company, and the Texas Company, appellants,
v.
THE UNITED STATES OF AMERICA. } No. 119.

THE UNITED STATES OF AMERICA, appellant,
v.
JEEMS BAYOU FISHING AND HUNTING Club, Producers Oil Company, and the Texas Company. } No. 137.

APPEALS FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

BRIEF FOR THE UNITED STATES.

THE PLEADINGS.

In its bill of complaint the United States alleged that it was and still is the owner of a designated tract of land in section 10, T. 20 N., R. 16 W., in Louisiana, containing 85.22 acres, being lots 8, 9, and 10, as

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shown by a plat of survey approved March 28, 1917. These lots are located in the fractional southwest quarter of that section. It was further alleged that on December 15, 1908, the President withdrew from settlement and entry and all other forms of appropriation all of the public lands in that township, as well as others not here in controversy; that on July 2, 1910, the President, by virtue of the authority conferred by the act of June 25, 1910 (36 Stat. 847), ratified and continued in force the previous order of withdrawal; that notwithstanding, the defendants, in bad faith, took possession and drilled seven wells out of which large quantities of oil were withdrawn; that this was done under color of a pretended lease made by the Jeems Bayou Fishing & Hunting Club to the Producers Oil Company, dated October 17, 1910; and that the value of the land and of the oil taken exceeds $100,000. Appropriate relief was prayed for (4). Each of the three defendants filed separate answers, but they do not require separate treatment. The drilling of the wells and the taking of oil were admitted, but the defendants deny that the land was a part of the public domain. On the contrary it was asserted that on April 2, 1860, the United States, under the homestead laws, issued a patent to Stephen D. Pitts to the fractional southwest quarter of section 10; that according to the field notes and the plat of survey this fractional section borders on Jeems Bayou, or Ferry Lake, a navigable body of water; that the patent, under which the defendant claims, operated to convey title to the

water's edge; and that the Department of the Interior was without jurisdiction to make a new survey. An estoppel was also pleaded, it being in substance alleged that in 1897 inquiry was made of the General Land Office whether the United States still owned any land in this vicinity, the reply being that it did not (13, 27, 34).

At this point it may be mentioned that no controversy exists as to the amount and value of the oil withdrawn. Its value, as the master found on undisputed testimony, was $293,234.18 (635–636); the cost of drilling and operating was $113,912.45, the difference, amounting to $179,321.73, representing the net value. Of this amount the Producers Oil Company paid to the Jeems Bayou Fishing & Hunting Club, its lessor, as royalty, $36,654.27. All of the oil was sold by the Producers Oil Company, the lessee, to the Texas Company. The master therefore recommended a decree establishing title in the United States and that judgment be entered against the Producers Oil Company and the Texas Company *in solido* for $142,667.46, and against all of the defendants *in solido* for $36,654.27, representing the royalties paid (636). Both parties filed exceptions, the United States on the ground that the defendants were not entitled to be credited with the cost of drilling and operating; the defendants on the ground that the land from which the oil was taken did not belong to the United States. All exceptions were overruled (672) and a decree entered in conformity with the

master's recommendations (676). Both parties appealed to the Circuit Court of Appeals on substantially the same grounds as set forth in their exceptions to the master's report. That court affirmed the decree (718). Both parties thereupon took appeals to this court, the defendants on the ground that the court was wrong in adjudging the property to belong to the United States, and the United States on the ground that the court was wrong in allowing the defendants credit for the cost of drilling.

THE FACTS.

The township was originally surveyed by Warren in 1839. Both his field notes and the plat of his survey were introduced in evidence. A township, if unoccupied by bodies of water, is supposed to contain 23,040 acres. Warren's plat shows that there were 10,328.09 acres, the rest of the township, amounting to approximately 12,711.91 acres, being occupied by Ferry Lake. All the way through the testimony reference is made to the 173.09-foot contour of the lake. This represents the mean high-water elevation of the lake in 1812, when Louisiana was admitted to the Union, and in 1839, when the Warren survey was made, above mean Gulf elevation, the reasons for adopting this level being explained at pp. 108 and 109. Ferry Lake is about 30 miles long and 2 miles wide (373), and first came into being about 1777 (356), during what is termed the great raft of the Red River, into which it flows (376). The presence of this raft operated to hold the waters of Red River

back and consequently to fill in the basin occupied by Ferry Lake. This raft was removed in 1874 (384). Naturally its removal operated to lower the level of the lake. Instead of being at an elevation of 173.09 its level is now 167 (69, 138). In other words, it was 5 to 7 feet higher in 1839, when Warren surveyed the township, than it is now (233).

Certain official surveys made of the township subsequent to the Warren survey of 1839 should now be noted. In 1841, two years after the Warren survey, a commission was appointed to establish the boundary line between Louisiana and the then Republic of Texas. It was then determined for the first time that the westerly portion of the township, as located by Warren, was within the Republic of Texas. Accordingly Morse, a deputy surveyor, was employed to connect the Warren section lines in the west tier of sections with the monuments upon this international boundary line, which resulted, of course, in fractional sections along the west tier. A plat of his survey was approved by the Surveyor General on July 24, 1846, and to that extent Morse's plat supersedes the Warren plat (81, 82). The Morse survey is only indirectly involved in this litigation. The proof shows that when Warren ran his section lines, he terminated them, with remarkable accuracy, at the 173.09-foot contour, which represented the then water's edge (71). But when he ran his so-called meander lines, he apparently paid no attention whatever to the 173.09-foot contour (130 et

passim). He should have had no difficulty in running his so-called meander line at this elevation (150), and if he had done so no land would have been omitted from his survey (84). His meander line ought to have conformed substantially to the line of the lake (77). As already indicated, Warren terminated his section lines, with a remarkable degree of accuracy, at the proper level of the lake, but whenever he attempted to run a meander line, if this is the proper term to use, he showed an absolute indifference to the level of the lake. Accordingly, when Morse made his survey along the western portion of the township he found that Warren's *section* lines agreed with the lake level but that his *meander* lines did not (82).

The next corrective survey was made by Boyd in 1854. He resurveyed sections 31 and 32, or, more accurately speaking, made an extension survey of these two sections, the effect of which was to survey land which Warren had represented as constituting a part of the bed of the lake (80, 81). The land thus surveyed by Boyd comprises lot 4 of section 32 and the fractional southeast quarter of section 31, the area being approximately 75 acres (133). To be more accurate the land surveyed by Boyd, which Warren omitted from his survey, constitutes 90.44 acres (156).

The next survey was by Bristol in 1871. (His survey is mentioned at some length in *Producers Oil Co.* v. *Hanzen*, 238 U. S. 325.) He, too, surveyed land which Warren had omitted from his survey and

which Warren represented as covered by the lake when, as a matter of fact, it was upland. Bristol's extension survey covered portions of sections 4, 9, and 10 (68, 133). The amount of land in these sections thus surveyed by Bristol, but omitted by Warren, is 280.12 acres (145).

The next survey was by Kidder. The first thing he did was to reestablish the lines of Warren's survey; that is to say, he located all of the corners of Warren's survey which were still in existence, and then from these corners ran the courses and distances mentioned in Warren's field notes. This resurvey plat was approved July 24, 1916 (86). Inasmuch as this resurvey disclosed that Warren had omitted a lot of upland not included in the Boyd and Bristol surveys, Kidder was directed to make what is termed an extension survey; that is to say, a survey of the land which Warren had omitted. This extension survey was made in 1916–17 and the plat was approved March 28, 1917 (117). The land thus included in Kidder's survey, but omitted from Warren's survey, embraces 617.20 acres (117), distributed throughout the township as follows:

Section 3 (lots 1, 2, and 3), 17.43 acres; section 4 (lots 3, 4, and 5), 28.74 acres; section 9 (lots 5 and 6), 66.29 acres; section 10 (lots 6, 7, 8, 9, and 10), 129.60 acres; section 12 (lot 1), 21.82 acres; section 13 (lot 1), 27.87 acres; section 15 (lots 1 and 2), 23.84 acres; section 16 (lot 1), 28.33 acres; section 23 (lots 1 and 2), 17.74 acres; section 24 (lot 1), 11.49 acres; section 25 (lot 1), 8.40 acres;

section 27 (lots 1, 2, and 3), 79.90 acres; section 32 (lot 5), 44.21 acres; section 36 (lots 1 and 2), 13.80 acres (119–120). The total area thus surveyed by Kidder is 617.21 acres (117, 120).

The total acreage thus erroneously omitted from the Warren survey of 1839 and afterwards included in the subsequent surveys is:

Boyd survey of 1854 (sections 31 and 32), 90.44 acres.

Bristol survey of 1871 (sections 4, 9, and 10), 280.13 acres.

Kidder survey of 1916–17 (sections 3, 4, 9, 10, 12, 13, 15, 16, 23, 24, 25, 27, 32, 36), 617.21 acres.

Total 987.78 (155).

Confining our attention now to Warren's so-called meander line through section 10, where the lands in controversy are situated, we find that according to his field notes he ran 24 meander courses. At no place does this line in that section agree closely with the border of Ferry Lake except at the *beginning* point of the eastern boundary and at the *terminating* point of the northern boundary (77). There is interesting testimony in the record showing how far in reality the lake was from this so-called meander line. As just mentioned, there are 24 meander courses which give 23 angles or turning points (77). Beginning at a point in the northwest quarter of section 10, where Bristol's meander line (which will hereafter be referred to), connects with Warren's meander line, and running southerly, the distances to the actual edge of the

lake from the various angles along the so-called Warren meander line in the northwest quarter and the southwest quarter of section 10, are as follows:

From angle point 2 in a southwesterly direction 3,950 feet, in a northwesterly direction 1,390 feet, in a southeasterly direction 1,920 feet; from angle point 3, 3,500 feet in a southwesterly direction; from angle point 4, 3,200 feet; from angle point 5, 3,450 feet; from angle point 6, 3,300 feet; from angle point 7, 3,040 feet; from angle point 8, 2,900 feet; from angle point 9, 3,200 feet; from angle point 10, 2,450 feet; from angle point 11, 2,848 feet to the west and 150 feet to the southeast; from angle point 12, which is at the margin of an embayment of Ferry Lake, 2,115 feet west; from angle point 13, 396 feet to the south; from angle point 14, 165 feet to the southwest (141–144). The average distance of the Warren meander line in section 10 to the lake is 2,510 feet (145–146).

As already stated Bristol in 1871 surveyed certain lands in sections 4, 9, and 10 which had been erroneously omitted from the Warren survey, the area amounting to 280.12 acres (145). Singularly enough, he too made a remarkable error in running his meander line. He began on the northern boundary of section 10 at the meander corner which Warren had established, and continued the section line west to the lake where Warren, if he had surveyed correctly, should have gone. Having thus established section lines at the north end of sections 9 and 10, he started

his meander line at a point on the section line between sections 4 and 9. Roughly speaking, his meander line described a large letter C. He went north into section 4, then turned west in the same section, then came south along the east margin of Jeems Bayou in sections 4 and 9, but instead of following the lake all the way around he abruptly left the shore line at a point in the southeast quarter of section 9 and, departing from the lake, proceeded easterly and northeasterly until he terminated his meander line on Warren's meander line in the northwest quarter of section 10 (153). The line from the point where he abruptly left the lake in the southeast of section 9 to its terminus in the northwest quarter of section 10, represents the *southern* boundary of the 280.12 acres surveyed by Bristol. But this portion of his meander line is altogether wrong (157). Instead of paralleling the lake he departs from it at a right angle, and his line is not in accordance with any rules known to surveyors in running meander lines (167). It is erroneous in every way (168) and is a manifest error (169). As a result of this error, he omits from his survey 235.35 acres to the south of his south meander line, located in sections 9, 10, 13, and 16, this omitted area being later included in Kidder's survey of the 617.21 acres.

Coming now to Warren's meander line, the testimony establishes beyond all controversy that it was erroneous in every way. There is not the slightest evidence of water along this line in section 10 (125). It was apparently run without regard to the border

of Ferry Lake and without regard to any contour or shore marks (130). Strangely enough, the average height of the land omitted from the Warren survey is greater than the height of the land actually included in the survey (124, 131). There is no reason for Warren running his meander line in the way he did (148). He should have had no difficulty in running a proper meander line (150), for the omitted area is upland and not swamp in character (152). His error is a manifest one (170). There is no foundation for the theory that in running his meander line the way he did, he was trying to arrive at an average in following the sinuosities of the lake shore (198). His meander line does not follow the lake and is a manifest error (210–211). It is an incorrect survey (231) and is a manifest error (232). His line does not follow the lake or mark its sinuosities (262) and is a manifest error (260). His meander line is without justification (305), and there is no doubt about its incorrectness (352). It is a manifest error (461). This testimony came from various witnesses.

The land in controversy in this suit (lots 8, 9, and 10 in the fractional southwest quarter of section 10), constitutes a part of a larger compact body, all of which was omitted from the Warren survey. We have already seen that the land included in Bristol's survey, omitted from Warren's, amounts to 280.12 acres, located in sections 4, 9, and 10. The area of land in sections 9, 10, 15, and 16, lying south of Bristol's south meander line, which was erroneously omitted from his survey, is 235.35 acres (167). In

other words, Warren omitted from his survey a compact body of 515.47 acres lying in sections 3, 4, 9, 10, 15, and 16, comprising the 280.12 acres which Bristol surveyed and the 235.35 acres which he did not. The area in lots 8, 9, and 10 involved in this suit is 85.22 acres (128) and, as already stated, is a part of a larger parcel in sections 9, 10, 15, and 16, comprising 235.35 acres, omitted from both the Warren and the Bristol surveys; and is a part of the compact body of 515.47 acres omitted by Warren, 280.12 acres of which were included in the Bristol survey of 1871.

It is somewhat remarkable that after Warren had omitted such a large area from his survey, Bristol, who was later employed to survey some of the omitted area, should himself commit a similar error. But the evidence is undisputed that while a good portion of his meander line is substantially correct, he nevertheless committed a palpable and inexcusable mistake when upon reaching a point in the southeast quarter of section 9 he departed abruptly at right angles from the shore of the lake and ran his line to a point of connection with Warren's in the northwest quarter of section 10, a distance of approximately 4,680 feet. This portion of his meander line is absolutely wrong. It does not conform in any way to the mean high-water elevation of the land and is not a contour line. On the contrary it is an irregular line through wooded upland, at a considerable elevation above mean high water, and does not agree with any bank or other surface marks indicating the presence of water. The

forest growth to the right and left of the line is identical (157,158). The character of the land through which this line runs is described in detail at pages 158–169. The line is not run in accordance with any rules known to surveyors in regard to running meander lines (167); is not parallel with the contour of the lake (167); it leaves the lake almost at right angles and runs through timber growth (167), the area being upland in character, with no marsh, pond, or basin (167). It is erroneous in every way throughout its entire length along the south boundary, and does not conform in any particular to the requirements of a meander line (168), there being nothing to indicate that it borders a body of water or approximates even in a remote degree a border of a body of water. The error is manifest and there is nothing to justify Bristol in placing the meander line where he does (169). The portion of his line just mentioned does not represent the border of the lake or any body of water; there is no water course or body of water along the line. It does not follow the sinuosities of the lake or even approximate them. It does not follow any contour (263). It does not run parallel to or even approximate the contour. It cuts across high land, over high bluffs, far above the contour representing mean high-water elevation (264). The lake lies about three-quarters of a mile south. There is nothing in the field notes other than inference to show that he was meandering the lake in running the line from A to C, which is his south boundary (266). The lake is not visible from the point B to point C on

his line (167). The exact distance from point B in a due southerly direction to the lake is 3,437.28 feet, about three-quarters of a mile (267). If the line was intended to represent the meander of Ferry Lake, it is incorrect and the error manifest (267, 268). His meander line is incorrect (319). His meander line from A to C goes through upland, the topographical features on both sides being the same, with no indications of a bank or stream (353, 354). This testimony also came from several witnesses.

Another interesting feature in connection with Warren's survey is the fact that his field notes do not in reality show that he was attempting to meander any stream. As already indicated, he terminated his *section* lines with remarkable accuracy at the edge of the lake, but his *meander* lines were run without any reference to a contour. His field notes do not show that he is following the margin of the lake, unless this can be inferred from such language as "Front section 24, Front section 13, Front section 12," etc. (254). There is no mention whatever in his field notes purporting to be a meander of the lake, no mention of the lake (255–256). Warren's survey gives no numbers to his angle points. He gives simply courses and distances. The angle points were numbered by Kidder's surveying party to make the records clear, and the courses and distances given in the Warren field notes make no reference to the shore (256). In describing the line between sections 10 and 11 and between sections 3 and 4, Warren mentions that he set a post at the lake. These are the only

points where he mentions in his field notes the lake in connection with his survey of section 10 (257). In referring, as Warren does, in his field notes to the traverse in front of certain sections, the inference is that they were bounded by water, but the presumption is not an absolute one, the inference being simply that he surveyed land bordering on the lake (271).

Another peculiarity about the case is the remarkable discrepancy in the acreage embraced in the patent to the fractional southwest quarter of section 10, under which the defendants deraign title. The patent to the fractional southwest quarter recites that it contains 23 acres (554). Whether this is a mistake or not, and if a mistake how it ever occurred, is left only to conjecture. By examining Warren's plat it will be seen that he gives the area of the fractional *southeast* quarter at 23 acres and that of the fractional *southwest* quarter, with a tongue of land extending a short distance into the northwest quarter, at 55.88 acres.

The actual area in the fractional southwest quarter surveyed by Warren is 50.88 acres, the tongue of land just mentioned, which extends into the northwest quarter, comprising about 5 acres, which makes the total of 55.88 above mentioned (183). While the patent for the fractional southwest quarter represents the acreage as 23, yet the survey made by Warren represents that fractional quarter as containing 55.88 acres, a palpable error (240). An accurate survey shows that part of the 55.88 acres surveyed by War-

ren which lies within the actual limits of the fractional southwest quarter to be 47.88 (241).

In this suit the Government in no way attacks the validity of the defendants' title to the 47.88 acres, notwithstanding the fact that the patent calls for only 23 acres. If the defendants prevail, they will acquire title to lots 8, 9, and 10, containing an area of 85.22 acres (128); and if it should be held that their title runs beyond section 10 to the actual margin of the lake they will acquire title to an additional 23.84 acres, constituting lots 1 and 2 of section 15 (119).

We have already stated that the 173.09-foot contour represents the elevation of the lake as it existed in 1812 when Louisiana was admitted to the Union and in 1839 when the township was first surveyed. The question naturally arises how this was determined. We have already adverted to the fact that when Warren ran his *section* lines he terminated them at the actual margin of the lake. When Kidder resurveyed, with the aid of Warren's field notes, the township as surveyed by Warren, he was able to tell with precision where Warren terminated these section lines. He found these points of termination to be the 173.09-foot contour. Of course Warren himself makes no mention of the 173.09-foot contour, this being, as previously explained, the elevation of the lake above mean Gulf level (108–109). Kidder thereupon set posts at the 173.09-foot elevation flanking the body of Ferry Lake in the township in question as it exists to-day. Geologists and

ecologists were employed by the Government to determine from geological and ecological evidence just where the margin of the lake was in 1812 and in 1839. They found from the sources of evidence just mentioned that the 173.09-foot contour was the actual elevation of the lake at that time. We deem it unnecessary to refer to the voluminous testimony which established this fact. The master found that to be the proper elevation; the District Court found likewise; and the Court of Appeals found the same way. The master said that a detailed reference to the evidence on this subject was unnecessary, since this elevation was stipulated to be the proper elevation in suits Nos. 1153, 1158, 1162, 1163, and 1164 (in this court Nos. 160, 161, 162, and 163) (District Court No. 1164 was not appealed). The master then went on to say that this fact "is not seriously denied, since all evidence is in, by the other defendant litigants" (625). Indeed one of the defendants, the Jeems Bayou Fishing and Hunting Club, in certain litigation involving these lands which it had with the board of commissioners of the Caddo levee district, asserted, as a part of its case, that the lands were not swamp or overflowed lands, and it denied that the same had ever been formed, either in whole or in part, since the survey "in the long ago" (580, 584, 630).

It is, of course, not controverted that the official plat of Warren's survey represents Ferry Lake as bordering on the fractional southwest quarter of section 10 (139).

It will only be necessary to state their substance:

1. The defendants in brief say that the Court of Appeals was wrong in adjudging the property in question to belong to the United States. In other words, the court ought to have held that the patent issued to Pitts on April 2, 1860, embracing the fractional southwest quarter of section 10, operated to convey title to the margin of the lake, which, of course, would include the lands in controversy (726).

2. In the cross appeal taken by the United States, the Government, in assigning error, says that the Court of Appeals was wrong in adjudging that the defendants were entitled to credit for the cost of *drilling* the wells from which the oil was taken. In the Court of Appeals the Government's assignments of error took a broader scope. It was there asserted that the District Court was wrong in allowing the defendants credit for both the cost of *drilling* and *operating*. In this court, however, we attack the ruling of the court below only to the extent that it allowed the defendants credit for the cost of *drilling* (736).

ARGUMENT.

It is submitted that if this court, under the circumstances disclosed in this record, should now adjudge that the patent under which the defendants claim passed title to the water's edge, the effect will necessarily be to overrule a long line of authorities.

We shall briefly call attention to these cases:

Horne v. *Smith*, 159 U. S. 40. In this case the Government plat represented fractional sections as bordering on a named *river*. As a matter of fact, the water bordering on the fractional sections was not a river but a *bayou*. Between the bayou and the river was a tract of ground, 600 acres in extent, which the plaintiff claimed to own by virtue of the patents to the fractional sections. The river was, in fact, a mile beyond. This court held that title under the patents stopped at the *bayou*.

Niles v. *Cedar Point Club*, 175 U. S. 300. In this case a meander line was run by the Government surveyor. Both the field notes and the plat showed a "marsh" and "impassable marsh and water" lying beyond the meander line. It was held that a patent to the fractional sections bordered by this meander line did not carry title beyond to the shore of Lake Erie.

French-Glenn Live Stock Co. v. *Springer*, 185 U. S. 47. Both the field notes and the plat represented Malheur Lake as bordering on certain fractional sections. Asserting that the patents thereto operated to convey title to the water's edge and therefore gave riparian rights to whatever land in front was

left dry by the recession of the lake, the plaintiff, deraigning title under these patents, sued to recover possession of the land thus left dry. The jury having determined by its verdict that the lake never existed in front of these fractional sections, this court, overruling the contention that the field notes and the plat were conclusive, held that title under the patents stopped at the so-called meander line.

Security Land & Exploration Co. v. *Burns*, 193 U. S. 167. The exterior lines of a township were surveyed, but with one small exception no survey was made of the interior. The survey was in fact fraudulent. The plat based upon this survey represented certain fractional sections as bordering on a lake when in fact the lake was nearly a mile away. It was held that patents to the fractional sections did not pass title to the large area lying between the so-called meander line and the actual shore of the lake.

Chapman, & Dewey v. *St. Francis*, 232 U. S. 186. A township plat of survey indicated an unsurveyed area of approximately 800 acres, designated thereon as "Sunk Lands." This area was meandered as though it were a lake when in fact it was only temporarily overflowed. It was held that a patent granting the township to Arkansas under the swamp land act did not operate to pass title to the part thus erroneously designated on the plat as a lake.

Producers Oil Co. v. *Hanzen*, 238 U. S. 325. The official plat, based upon a survey in 1871, showed two lines in close proximity to each other, one

representing the surveyor's traverse lines and the other the shore of a bayou. To use the language of this court, the plat "is very small and does not indicate with certainty whether traverse lines or the stream constitute" the boundary. In describing one of the courses, the field notes recited that at a designated point a "spur of marsh extends out north." While recognizing the general rule that patents to fractional sections bordering on a navigable stream carry title to the water's edge, it was held that the circumstances just referred to, as well as others mentioned in the opinion, such as the discrepancy between the number of acres designated in the patent and the area in dispute, took the case out of the general rule.

Lee Wilson & Co. v. *United States*, 245 U. S. 24. In this case it was held that although the Government survey indicated a lake, 853.60 acres in extent, within the township, the Government, nevertheless, in patenting the township to the State of Arkansas, did not part with the title to the 853.60 acres, the lake itself being a myth and the survey a mistake in this respect.

It is of course not disputed that the general rule is that a lake or watercourse shown on the plat of survey is the real boundary, and that a patent conveys title to the water's edge and not merely to the meander line.

In one of the main cases, *Railroad Co.* v. *Schurmeir*, 7 Wall. 272, in which this doctrine was laid down, the court says:

> In preparing the official plat from the field notes, the meander line is represented as the

> border line of the stream, and shows to a demonstration that the watercourse and not the meander line, as actually run on the land, is the boundary.

Another leading case is *Mitchell* v. *Smale*, 140 U. S. 406. There a patent was issued to a fractional quarter of a fractional section, containing 4.53 acres. Both the field notes and the plat based thereon showed that the lake bordering upon this fractional section was meandered. There was, however, a tongue of land, containing 25 acres, extending into the lake. While it was held that under the circumstances shown the patent operated to pass title to the water's edge and therefore to include this area, the court was nevertheless careful to say:

> We do not mean to say that in running a pretended meander line the survey or may not make a plain and obvious mistake, or be guilty of a palpable fraud; in which case the Government would have the right to recall the survey and have it corrected by the courts, or in some other way. Cases have happened in which, by mistake, the meander line described by a surveyor in the field notes of his survey did not approach the water line intended to be portrayed. Such mistakes, of course, do not bind the Government.

But the court continued:

> In the present case it can not be seriously contended that any palpable mistake was made or that any fraud was committed by the surveyor who made the survey in 1834–35.

In the present case, however, the undisputed evidence establishes, we submit beyond all controversy, that a palpable mistake was made.

The Government is in no way seeking to cancel the patent under which the defendants claim. The question is simply one of determining at what line the title under that patent stops. Under the allegations of the Government's bill proof was therefore admissible to determine where the true boundary line is.

The issue is whether the tracts in controversy are included in the patent. The patent speaks for itself so far as the description is concerned, and the question is whether title stopped at Warren's so-called meander line, or whether it extended beyond that line to the actual edge of the lake. Assuming that his traverses were intended as meanders, which is not true, it is clear that the testimony offered to establish error in these lines was competent. The effect of such evidence was only to show that the patented area was bounded by those traverse lines. It did not tend to change the location or area of the patented tract.

In *Security Land & Exploration Co.* v. *Burns*, 193 U. S. 167, 183:

> Nor in such case is it necessary to go into equity to reform the patent. Where the patentee has in fact received and is in possession of all the land actually described in the lines and distances, and is seeking for more on the theory that his plat of survey carries him to the water, a denial of that claim upon such facts as appear here is well founded and re-

quires no reformation of the patent. It is simply a question of boundary, and it is a legal defense; it is but a denial that the land claimed is in fact included in the patent as it exists, and no aid of a court of equity is necessary to sustain such a defense.

To the same effect:

Niles v. *Cedar Point Club*, 175 U. S. 300, 308.

Lee Wilson & Co. v. *United States*, 245 U. S. 24, 31.

Graham v. *Gill*, 223 U. S. 463.

French-Glenn Live Stock Co. v. *Springer*, 185 U. S. 47.

Horne v. *Smith*, 159 U. S. 40.

Kirwan v. *Murphy*, 189 U. S. 35.

Indeed in *Mitchell* v. *Smale*, 140 U. S. 406, evidence as to the correctness or incorrectness of Government surveys was admitted in a plain action of ejectment, apparently without any allegations in the pleadings as to the incorrectness of the Government survey.

See also *Hardin* v. *Jordan*, 140 U. S. 371.

There is no merit in the contention that the Government is estopped to prosecute this suit by reason of the letter written by the Commissioner of the General Land Office to Senator Blanchard or by reason of the letter of the Director of the Geological Survey to the Secretary of the Interior.

Utah Power & Light Co. v. *United States*, 243 U. S. 389.

Lee Wilson & Co. v. *United States*, 245 U. S. 24.

The defense of laches is not available.

United States v. *New Orleans Pac. Ry. Co.*, 248 U. S. 507.

The Court of Appeals was wrong in allowing the defendants credit for the cost of drilling the well.

As already indicated, the Government's assignments of error in the Court of Appeals assailed the action of the District Court in allowing the defendants credit for both the cost of *drilling* and of *operation*. The assignments of error in this court simply challenge the action of the District Court in allowing credit for the cost of *drilling*. Inasmuch as our brief in consolidated cases Nos. 117, 104, 111, 112, 113, 114, 115, and 116 goes at length into the question of the proper measure of damages, we think it unnecessary to repeat the argument here, particularly because some of the counsel appearing in those cases also appear here. The following cases sustain our contention:

United States v. *St. Anthony R. R. Co.*, 192 U. S. 524.

United States v. *Midway Northern Oil Co.*, 232 Fed. 619, 633.

United States v. *McCutchen*, 238 Fed. 575, 593, 594.

St. Clair v. *Cash Gold Min. & Mill. Co.*, 9 Colo. App. 235, 241; 47 Pac. 466, 468.

Hall v. *Abraham*, 44 Ore. 477, 481; 75 Pac. 882, 883.

Martin v. *Porter*, 5 Mees. & W. 351 (1839).

Morgan v. *Powell*, 3 Q. B. 278 (1842).

Llynvi Co. v. *Brogden*, L. R., 11 Eq. 188 (1870).

That portion of the decree of the Court of Appeals awarding the land in question to the United States

should, it is respectfully submitted, be affirmed; but that portion giving the defendants credit for the cost of drilling should be reversed.

JAMES M. BECK,
Solicitor General.
WILLIAM D. RITER,
Assistant Attorney General.

NOVEMBER, 1922.

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JEEMS BAYOU FISHING & HUNTING CLUB ET AL *v.* UNITED STATES.

UNITED STATES *v.* JEEMS BAYOU HUNTING & FISHING CLUB ET AL.

APPEALS FROM THE CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

Nos. 119 and 137. Argued November 21, 22, 1922.—Decided January 2, 1923.

1. The rule that where lands are patented according to an official plat, showing meander lines along or near the margin of a body of water, the plat is to be treated as part of the conveyance and the water itself constitutes the boundary, does not apply when it is conclusively shown that no body of water exists or existed at or near the place indicated or where no attempt to survey tracts lying beyond the meander line was actually made. P. 564.
2. The United States can not be estopped to question the existence of a survey by statements made in correspondence by officials of the Land Department. P. 564.
3. Defendants who took possession of land in Louisiana and extracted oil, in good faith, under a patent which had long been erroneously treated by government officials as conveying the tract, are liable, as innocent trespassers, for the value of the oil after deducting the cost of drilling and operating the wells. P. 564. See *Mason* v. *United States*, *ante*, 545.

274 Fed. 18, affirmed.

APPEAL and cross appeal from a decree of the Circuit Court of Appeals affirming a decree of the District Court in a suit by the United States to quiet its title to a tract of public land, enjoin trespasses and secure an accounting for oil wrongfully extracted.

Mr. Harry T. Klein and *Mr. Hampden Story*, with whom *Mr. Elias Goldstein* and *Mr. H. C. Walker* were on the brief, for Jeems Bayou Fishing & Hunting Club et al.

Mr. Assistant Attorney General Riter, with whom *Mr. Solicitor General Beck* was on the brief, for the United States.

MR. JUSTICE SUTHERLAND delivered the opinion of the Court.

The United States brought suit in equity in the District Court of the United States for the Western District of Louisiana, against the defendants (appellants and cross appellees here) to have its title to 85.22 acres of land in the Parish of Caddo, Louisiana, confirmed, possession restored, assertion of claims thereto by defendants enjoined, and an accounting had for the value of oil removed therefrom by the defendants, or any of them.

That court, upon the report of a master, entered a decree for the plaintiff and awarded damages for the value of the oil removed, after deducting the cost of drilling and operating the wells by means of which the oil was recovered.

The case is here by appeal from the decree of the Circuit Court of Appeals, affirming that of the District Court. 274 Fed. 18.

The Fishing & Hunting Club claimed title through mesne conveyances from one Stephen D. Pitts, to whom a patent had been issued in 1860 for the southwest fractional quarter of Section 10, in Township twenty North, Range 16 West, "according to the official plat of the survey of said lands, returned to the General Land Office by the Surveyor General." The other defendants depend upon a lease from the Fishing & Hunting Club to the Producers Oil Company. The official plat referred to in the Pitts patent was the plat of a survey made by A. W. Warren, in 1839, and approved and filed in the General Land Office the same year. The fractional quarter section described contained about 48 acres, though the patent erroneously gave it as 23 acres. The land in question lies

west and south and immediately adjoining, but other lands still intervene between it and the permanent lake shore. According to the plat, the land so patented to Pitts borders upon Ferry Lake, or Jeems Bayou, a navigable body of water, and is shown on the plat as a small peninsula extending into the water and connected by a narrow neck with the mainland. The evidence, which is voluminous and substantially uncontroverted, makes it very clear that no such peninsula exists or existed at the time of the survey in 1839. On the contrary, a later survey, called an extension survey, made in 1916–1917, shows that a large compact body of upland, more than 500 acres in extent, which is, and in 1839 was, well timbered with a growth of pine, oak and other trees, lies between this supposititious peninsula and the shore line of the lake in every direction except for a short distance along the east boundary as delineated upon the plat. This body of land extends beyond the boundaries of Section 10 into the adjoining Sections 9, 15 and 16. Across the lands in controversy, which are included in the larger body just mentioned, the actual shore line of the lake is, and was in 1839, from a few hundred feet to three-quarters of a mile distant from the outside boundaries of the land patented to Pitts, as shown on the Warren plat.

The Warren field notes describe the peninsular shaped tract of land, not by lines purporting to meander the margin of any body of water but by courses and distances. There is nothing in the field notes to indicate a water boundary, unless as a matter of mere inference, which the most casual inspection of the locality would instantly dissipate. The inaccuracy of the plat is plainly apparent upon a like inspection. Why Warren made the survey and returned the plat as he did is a matter of speculation but the facts demonstrate that no survey of the large, compact body of land which includes the tract in controversy, was ever made. The circumstances, as well as the

extent and character of the lands, necessitate the conclusion that the omission was of deliberate purpose or the result of such gross and palpable error as to constitute in effect a fraud upon the Government.

The defendants rely upon the rule that where lands are patented according to an official plat of survey, showing meander lines along or near the margin of a body of water, the plat is to be treated as a part of the conveyance and the water itself constitutes the boundary. The rule is familiar and has received the approval of this Court many times. *Producers Oil Co.* v. *Hanzen*, 238 U. S. 325, 338, and cases cited. But it is not absolute, as this Court has also frequently decided. It will not be applied where, as here, the facts conclusively show that no body of water existed or exists at or near the place indicated on the plat or where, as here, there never was, in fact, an attempt to survey the land in controversy. *Security Land & Exploration Co.* v. *Burns*, 193 U. S. 167; *Lee Wilson & Co.* v. *United States*, 245 U. S. 24; *Producers Oil Co.* v. *Hanzen, supra; Horne* v. *Smith*, 159 U. S. 40; *French-Glenn Live Stock Co.* v. *Springer*, 185 U. S. 47; *Chapman & Dewey Lumber Co.* v. *St. Francis Levee District*, 232 U. S. 186.

But it is asserted that plaintiff is estopped from claiming title to the land because of certain correspondence with the Commissioner of the General Land Office, in 1897, wherein that officer said that there were no unsurveyed lands in the locality in question and because of an official letter from the Director of the Geological Survey to the same effect. It is clear, however, that the United States cannot be so estopped. *Lee Wilson & Co.* v. *United States, supra; Utah Power & Light Co.* v. *United States*, 243 U. S. 389, 408.

We think the measure of damages adopted by the courts below was correct. The defendants were in possession of the land and extracted the oil therefrom in good faith.

The land had been for many years treated by the officials of the Government as having been conveyed by the Pitts patent. The defendants were innocent trespassers within the rule laid down by this Court in *United States* v. *St. Anthony R. R. Co.*, 192 U. S. 524, 542. Moreover, the case is governed in this respect by the more liberal rule of the Louisiana Civil Code (Article 501), as interpreted by the decisions of the highest court of that State. *Mason* v. *United States, ante*, 545.

The decree of the Circuit Court of Appeals is affirmed.

BALTIMORE & OHIO RAILROAD COMPANY *v.*